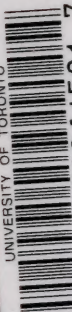



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A COLLECTION OF
INTERNATIONAL CONVENTIONS AND DECLARATIONS
OF A LAW-MAKING KIND

EDITED
WITH INTRODUCTION AND NOTES
BY
Edward
E. A. WHITTUCK, B.C.L. OXON.
ONE OF THE GOVERNORS OF
THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

APPENDIX

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LA CONFÉRENCE NAVALE DE LONDRES

THE LONDON NAVAL CONFERENCE

LA CONFÉRENCE NAVALE DE LONDRES

Protocole de Clôture

LA Conférence Navale de Londres, convoquée par le Gouvernement de Sa Majesté Britannique, s'est réunie, le 4 décembre 1908, au Ministère des Affaires Étrangères, à l'effet de déterminer les principes généralement reconnus du droit international dans le sens de l'article 7 de la Convention signée à La Haye le 18 octobre 1907, pour l'établissement d'une Cour internationale des prises.

Les Puissances, dont l'énumération suit, ont pris part à cette Conférence, pour laquelle elles avaient désigné les Délégués nommés ci-après :—

(Suivent les noms des Délégués)

Dans une série de réunions, tenues du 4 décembre 1908 au 26 février 1909, la Conférence a arrêté, pour être soumis à la signature des Plénipotentiaires, la *Déclaration relative au droit de la guerre maritime*, dont le texte est annexé au présent Protocole.

En outre, le vœu suivant a été adopté par les Délégués des Puissances qui ont signé ou qui ont exprimé l'intention de signer la Convention de La Haye en date du 18 octobre 1907 pour l'établissement d'une Cour internationale des prises :—

Les Délégués des Puissances représentées à la Conférence Navale et qui ont signé ou qui ont exprimé l'intention de signer la Convention de La Haye en date du 18 Octobre 1907 pour l'établissement d'une Cour internationale des prises, considérant les difficultés d'ordre constitutionnel qui, pour certains États, s'opposent à la ratification, sous sa forme actuelle, de cette Convention, sont d'accord pour signaler à leurs Gouvernements respectifs l'avantage que présenterait la conclusion d'un arrangement en vertu duquel lesdits États auraient, lors du dépôt de

THE LONDON NAVAL CONFERENCE

Final Protocol

THE London Naval Conference, called together by His Britannic Majesty's Government, assembled at the Foreign Office on the 4th December, 1908, with the object of laying down the generally recognised principles of international law in accordance with Article 7 of the Convention signed at The Hague on the 18th October, 1907, for the establishment of an International Prize Court.¹

The Powers enumerated below² took part in this Conference, at which they appointed as their Representatives the following Delegates :—

(Here follow the names of the Delegates)

In a series of sittings held from the 4th December, 1908, to the 26th February, 1909, the Conference has drawn up for signature by the Plenipotentiaries the *Declaration concerning the laws of naval war*, the text of which is annexed to the present Protocol.

Furthermore, the following 'wish' ('*vœu*') has been recorded by the Delegates of those Powers which have signed or expressed the intention of signing the Convention of The Hague of the 18th October, 1907, for the establishment of an International Prize Court :—

The Delegates of the Powers represented at the Naval Conference which have signed or expressed the intention of signing the Convention of The Hague of the 18th October, 1907, for the establishment of an International Prize Court, having regard to the difficulties of a constitutional nature which, in some States, stand in the way of the ratification of that Convention in its present form,³ agree to call the attention of their respective Governments to the advantage of concluding an arrangement under which such States would have the power, at the time of depositing

¹ For the text of this Convention see p. 189, and cf. Introduction, p. xxxiv.

² These were Austria-Hungary, France, Germany, Great Britain, Italy, Japan, the Netherlands, Russia, Spain and the United States of America.

³ The 'wish' was particularly intended to obviate a difficulty caused by the constitution of the United States, which is that its Supreme Court cannot be made subject by an act of Congress to an International Prize Court or to any other authority.

leurs ratifications, la faculté d'y joindre une réserve portant que le droit de recourir à la Cour internationale des prises, à propos des décisions de leurs tribunaux nationaux, se présentera comme une action directe en indemnité, pourvu toutefois que l'effet de cette réserve ne soit pas de nature à porter atteinte aux droits garantis par ladite Convention, soit aux particuliers, soit à leurs Gouvernements, et que les termes de la réserve forment l'objet d'une entente ultérieure entre les Puissances Signataires de la même Convention.

En foi de quoi les Plénipotentiaires et les Délégués remplaçant les Plénipotentiaires qui ont déjà dû quitter Londres ont signé le présent Protocole.

Fait à Londres le vingt-six février mil neuf cent neuf, en un seul exemplaire, qui sera déposé dans les archives du Gouvernement Britannique et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances représentées à la Conférence Navale.

(Suivent les noms)

DÉCLARATION RELATIVE AU DROIT DE LA GUERRE MARITIME
 Sa Majesté l'Empereur d'Allemagne, Roi de Prusse ; le Président des États-Unis d'Amérique ; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, &c., et Roi Apostolique de Hongrie ; Sa Majesté le Roi d'Espagne ; le Président de la République Française ; Sa Majesté le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des Territoires Britanniques au delà des Mers, Empereur des Indes ; Sa Majesté le Roi d'Italie ; Sa Majesté l'Empereur du Japon ; Sa Majesté la Reine des Pays-Bas ; Sa Majesté l'Empereur de Toutes les Russies ;

Considérant l'invitation par laquelle le Gouvernement Britannique a proposé à diverses Puissances de se réunir en Conférence afin de déterminer en commun ce que comportent les règles généralement reconnues du droit international au sens de l'article 7 de la Convention du 18 octobre 1907, relative à l'établissement d'une Cour internationale des prises ;

their ratifications, to add thereto a reservation to the effect that the right of resort to the International Prize Court in respect of decisions of their National Tribunals shall take the form of a direct (not an appellate) suit for compensation, provided always that the effect of this reservation shall not be such as to impair the rights secured under the said Convention either to individuals or to their Governments, and that the terms of the reservation shall form the subject of a subsequent understanding between the Powers signatory of that Convention.

In faith whereof the Plenipotentiaries and the Delegates representing those Plenipotentiaries who have already left London have signed the present Protocol.

Done at London the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall be deposited in the archives of the British Government and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

(The names follow)

DECLARATION CONCERNING THE LAWS OF NAVAL WAR¹

HIS Majesty the Emperor of Germany, King of Prussia ; the President of the United States of America ; His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary ; His Majesty the King of Spain ; the President of the French Republic ; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India ; His Majesty the King of Italy ; His Majesty the Emperor of Japan ; Her Majesty the Queen of the Netherlands ; His Majesty the Emperor of All the Russias ;

Having regard to the terms in which the British Government P. 27
invited various Powers to meet in Conference in order to arrive at an agreement as to what are the generally recognised rules of international law within the meaning of Article 7² of the Convention of 18th October, 1907, relative to the establishment of an International Prize Court ;

¹ In reading this Declaration constant reference should be made to the General Report of its Drafting Committee, which will be found on p. 275. The references in the margin of the text are to this Report. The Report of the British Delegates to Sir Edward Grey should also be consulted. See Parl. Misc., No. 4 (1909), p. 93 ff.

² See p. 192 ; cf. Introduction, p. xxxiv, and n. 1, p. 256.

Reconnaissant tous les avantages que, dans le cas malheureux d'une guerre maritime, la détermination desdites règles présente, soit pour le commerce pacifique, soit pour les belligérants et pour leurs relations politiques avec les Gouvernements neutres ;

Considérant que les principes généraux du droit international sont souvent, dans leur application pratique, l'objet de méthodes divergentes ;

Animés du désir d'assurer dorénavant une plus grande uniformité à cet égard ;

Espérant qu'une œuvre d'un intérêt commun aussi important rencontrera l'approbation générale ;

Ont nommé pour leurs Plénipotentiaires, savoir :

(Suivent les noms des Plénipotentiaires)

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de faire la présente Déclaration :—

Disposition préliminaire

Les Puissances Signataires sont d'accord pour constater que les règles contenues dans les Chapitres suivants répondent, en substance, aux principes généralement reconnus du droit international.

CHAPITRE PREMIER.—*Du blocus en temps de guerre.*

ARTICLE I

Le blocus doit être limité aux ports et aux côtes de l'ennemi ou occupés par lui.

ARTICLE II

Conformément à la Déclaration de Paris de 1856, le blocus, pour être obligatoire, doit être effectif, c'est-à-dire maintenu par une force suffisante pour interdire réellement l'accès du littoral ennemi.

ARTICLE III

La question de savoir si le blocus est effectif est une question de fait.

Recognising all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present, both as regards peaceful commerce, and as regards the belligerents and their political relations with neutral Governments ;

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of international law ;

Animated by the desire to insure henceforward a greater measure of uniformity in this respect ;

Hoping that a work so important to the common welfare will meet with general approval ;

Have appointed as their Plenipotentiaries, that is to say :

(Here follow the names of the Plenipotentiaries)

Who, after having communicated their full powers, found to be in good and due form, have agreed to make the present Declaration :—

Preliminary Provision

The Signatory Powers are agreed that the rules contained in the following Chapters correspond in substance with the generally recognised principles of international law.¹ P. 28

CHAPTER I.—*Blockade in Time of War.*

ARTICLE I

A blockade must be confined to the ports and coasts belonging to or occupied by the enemy. P. 28

ARTICLE II

In accordance with the Declaration of Paris of 1856,² a blockade, in order to be binding, must be effective—that is to say, maintained by a force really sufficient to prevent access to the enemy coastline.

ARTICLE III

The question whether a blockade is effective is a question of fact.

¹ It should be noticed that while the Conference professed to proceed on the assumption here made, its principal object of course was to reconcile the divergent rules and practice of the Powers relating to the subjects of maritime law submitted to it.

² For the text of the Declaration of Paris see p. 1 and *cf.* Introduction, p. x.

ARTICLE IV

Le blocus n'est pas considéré comme levé si, par suite du mauvais temps, les forces bloquantes se sont momentanément éloignées.

ARTICLE V

Le blocus doit être impartialement appliqué aux divers pavillons.

ARTICLE VI

Le commandant de la force bloquante peut accorder à des navires de guerre la permission d'entrer dans le port bloqué et d'en sortir ultérieurement.

ARTICLE VII

Un navire neutre, en cas de détresse constatée par une autorité des forces bloquantes, peut pénétrer dans la localité bloquée et en sortir ultérieurement à la condition de n'y avoir laissé ni pris aucun chargement.

ARTICLE VIII

Le blocus, pour être obligatoire, doit être déclaré conformément à l'article 9 et notifié conformément aux articles 11 et 16.

ARTICLE IX

La déclaration de blocus est faite, soit par la Puissance bloquante, soit par les autorités navales agissant en son nom.

Elle précise :

- 1°. La date du commencement du blocus ;
- 2°. Les limites géographiques du littoral bloqué ;
- 3°. Le délai de sortie à accorder aux navires neutres.

ARTICLE X

Si la Puissance bloquante ou les autorités navales agissant en son nom ne se conforment pas aux mentions, qu'en exécution de l'article 9—1° et 2°, elles ont dû inscrire dans la déclaration de blocus, cette déclaration est nulle, et une nouvelle déclaration est nécessaire pour que le blocus produise ses effets.

ARTICLE IV

A blockade is not regarded as raised if the blockading force P. 281 is temporarily removed in consequence of stress of weather.

ARTICLE V

A blockade must be applied impartially to the ships of all nations.

ARTICLE VI

The commander of a blockading force may give permission P. 282 to a warship to enter, and subsequently to leave, a blockaded port.

ARTICLE VII

In circumstances of distress, acknowledged by an officer in authority of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

ARTICLE VIII

A blockade, in order to be binding, must be declared in P. 283 accordance with Article 9, and notified in accordance with Articles 11 and 16.

ARTICLE IX

A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies :

- (1) The date when the blockade begins ;
- (2) The geographical limits of the coastline under blockade ;
- (3) The period within which neutral vessels are permitted to come out.

ARTICLE X

If the conduct of the blockading Power, or of the naval P. 284 authorities acting in its name, does not conform with the particulars which, in accordance with Article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

ARTICLE XI

La déclaration de blocus est notifiée :

1°. Aux Puissances neutres, par la Puissance bloquante, au moyen d'une communication adressée aux Gouvernements eux-mêmes ou à leurs représentants accrédités auprès d'elle ;

2°. Aux autorités locales, par le commandant de la force bloquante. Ces autorités, de leur côté, en informeront, aussitôt que possible, les consuls étrangers qui exercent leurs fonctions dans le port ou sur le littoral bloqués.

ARTICLE XII

Les règles relatives à la déclaration et à la notification de blocus sont applicables dans la cas où le blocus serait étendu ou viendrait à être repris après avoir été levé.

ARTICLE XIII

La levée volontaire du blocus, ainsi que toute restriction qui y serait apportée, doit être notifiée dans la forme prescrite par l'article II.

ARTICLE XIV

La saisissabilité d'un navire neutre pour violation de blocus est subordonnée à la connaissance réelle ou présumée du blocus.

ARTICLE XV

La connaissance du blocus est, sauf preuve contraire, présumée, lorsque le navire a quitté un port neutre postérieurement à la notification, en temps utile, du blocus à la Puissance dont relève ce port.

ARTICLE XVI

Si le navire qui approche du port bloqué n'a pas connu ou ne peut être présumé avoir connu l'existence du blocus, la notification doit être faite au navire même par un officier de l'un des bâtiments de la force bloquante. Cette notification doit être portée sur le livre de bord avec indication de la date et de l'heure, ainsi que de la position géographique du navire à ce moment.

Le navire neutre qui sort du port bloqué, alors que, par la négligence du commandant de la force bloquante, aucune

ARTICLE XI

A declaration of blockade is notified—

(1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments themselves, or to their representatives accredited to it ; P. 284

(2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coastline under blockade as soon as possible.

ARTICLE XII

The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised. P. 285

ARTICLE XIII

The voluntary raising of a blockade, as also any restriction which may be placed on it, must be notified in the manner prescribed by Article II.

ARTICLE XIV

The liability of a neutral vessel to capture for breach of blockade is dependent on her knowledge, actual or presumptive, of the blockade. P. 286

ARTICLE XV

Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification could have reached the port in sufficient time.

ARTICLE XVI

If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified

déclaration de blocus n'a été notifiée aux autorités locales ou qu'un délai n'a pas été indiqué dans la déclaration notifiée, doit être laissé libre de passer.

ARTICLE XVII

La saisie des navires neutres pour violation de blocus ne peut être effectuée que dans le rayon d'action des bâtiments de guerre chargés d'assurer l'effectivité du blocus.

ARTICLE XVIII

Les forces bloquantes ne doivent pas barrer l'accès aux ports et aux côtes neutres.

ARTICLE XIX

La violation du blocus est insuffisamment caractérisée pour autoriser la saisie du navire, lorsque celui-ci est actuellement dirigé vers un port non bloqué, quelle que soit la destination ultérieure du navire ou de son chargement.

ARTICLE XX

Le navire qui, en violation du blocus, est sorti du port bloqué ou a tenté d'y entrer, reste saisissable tant qu'il est poursuivi par un bâtiment de la force bloquante. Si la chasse en est abandonnée ou si le blocus est levé, la saisie n'en peut plus être pratiquée.

ARTICLE XXI

Le navire reconnu coupable de violation de blocus est confisqué. Le chargement est également confisqué, à moins qu'il soit prouvé qu'au moment où la marchandise a été embarquée, le chargeur n'a ni connu ni pu connaître l'intention de violer le blocus.

CHAPITRE II.—*De la contrebande de guerre*

ARTICLE XXII

Sont de plein droit considéré comme contrebande de guerre les objets et matériaux suivants, compris sous le nom de contrebande absolue, savoir :

1°. Les armes de toute nature, y compris les armes de chasse, et les pièces détachées caractérisées.

to the local authorities, or if in the declaration, as notified, no period has been mentioned within which neutral vessels are permitted to come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

ARTICLE XVII

Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective. Pp. 287,
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ARTICLE XVIII

The blockading forces must not bar access to neutral ports or coasts. P. 289

ARTICLE XIX

Whatever may be the ulterior destination of a vessel or her cargo, breach of blockade is not sufficiently determined, so as to justify her capture, if she is actually on her way to a non-blockaded port.

ARTICLE XX

A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

ARTICLE XXI

A vessel found guilty of breach of blockade is liable to confiscation. The cargo is also confiscated, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade. P. 290

CHAPTER II.—*Contraband of War*

ARTICLE XXII

The following articles are regarded by mere operation of law without previous declaration or notice as contraband of war, under the name of absolute contraband¹ :— Pp. 290,
291

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

¹ For contraband with previous notice see Articles 23, 25.

2°. Les projectiles, gargousses et cartouches de toute nature, et les pièces détachées caractérisées.

3°. Les poudres et les explosifs spécialement affectés à la guerre.

4°. Les affûts, caissons, avant-trains, fourgons, forges de campagne, et les pièces détachées caractérisées.

5°. Les effets d'habillement et d'équipement militaires caractérisés.

6°. Les harnachements militaires caractérisés de toute nature.

7°. Les animaux de selle, de trait et de bât, utilisables pour la guerre.

8°. Le matériel de campement et les pièces détachées caractérisées.

9°. Les plaques de blindage.

10°. Les bâtiments et embarcations de guerre et les pièces détachées spécialement caractérisées comme ne pouvant être utilisées que sur un navire de guerre.

11°. Les instruments et appareils exclusivement faits pour la fabrication des munitions de guerre, pour la fabrication et la réparation des armes et du matériel militaire, terrestre ou naval.

ARTICLE XXIII

Les objets et matériaux qui sont exclusivement employés à la guerre peuvent être ajoutés à la liste de contrebande absolue au moyen d'une déclaration notifiée.

La notification est adressée aux Gouvernements des autres Puissances ou à leurs représentants accrédités auprès de la Puissance qui fait la déclaration. La notification faite après l'ouverture des hostilités n'est adressée qu'aux Puissances neutres.

ARTICLE XXIV

Sont de plein droit considérés comme contrebande de guerre les objets et matériaux susceptibles de servir aux usages de la guerre comme à des usages pacifiques, et compris sous le nom de contrebande conditionnelle, savoir :

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives specially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armour plates.

(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

ARTICLE XXIII

Articles and material exclusively used for war may be added to the list of absolute contraband by means of a declaration, which must be notified. P. 291

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

ARTICLE XXIV

The following articles and material, susceptible of use in war as well as for purposes of peace, are regarded by mere operation of law, without previous declaration or notice, as contraband of war, under the name of conditional contraband¹ :— P. 292

¹ As to the distinction between absolute and conditional contraband cf. Arts. XXX.-XXXVI.

1°. Les vivres.

2°. Les fourrages et les graines propres à la nourriture des animaux.

3°. Les vêtements et les tissus d'habillement, les chaussures, propres à des usages militaires.

4°. L'or et l'argent monnayés et en lingots, les papiers représentatifs de la monnaie.

5°. Les véhicules de toute nature pouvant servir à la guerre, ainsi que les pièces détachées.

6°. Les navires, bateaux et embarcations de tout genre, les docks flottants, parties de bassins, ainsi que les pièces détachées.

7°. Le matériel fixe ou roulant des chemins de fer, le matériel des télégraphes, radiotélégraphes et téléphones.

8°. Les aérostats et les appareils d'aviation, les pièces détachées caractérisées ainsi que les accessoires, objets et matériaux caractérisés comme devant servir à l'aérostation ou à l'aviation.

9°. Les combustibles ; les matières lubrifiantes.

10°. Les poudres et les explosifs qui ne sont pas spécialement affectés à la guerre.

11°. Les fils de fer barbelés, ainsi que les instruments servant à les fixer ou à les couper.

12°. Les fers à cheval et le matériel de maréchalerie.

13°. Les objets de harnachement et de sellerie.

14°. Les jumelles, les télescopes, les chronomètres et les divers instruments nautiques.

ARTICLE XXV

Les objets et matériaux susceptibles de servir aux usages de la guerre comme à des usages pacifiques, et autres que ceux visés aux articles 22 et 24, peuvent être ajoutés à la liste de contrebande conditionnelle au moyen d'une déclaration qui sera notifiée de la manière prévue à l'article 23, deuxième alinéa.

ARTICLE XXVI

Si une Puissance renonce, en ce qui la concerne, à considérer comme contrebande de guerre des objets et matériaux qui rentrent dans une des catégories énumérées aux articles

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion ; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds ; floating docks, parts of docks and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognisable as intended for use in connection with balloons and flying machines.
- (9) Fuel ; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

ARTICLE XXV

Articles and material susceptible of use in war as well as P. 292
for purposes of peace, other than those enumerated in Articles
22 and 24, may be added to the list of conditional contraband
by means of a declaration, which must be notified in the
manner provided for in the second paragraph of Article 23.

ARTICLE XXVI

If a Power waives, so far as it is concerned, the right to treat
as contraband of war an article or material comprised in any of
the classes enumerated in Articles 22 and 24, such intention

22 et 24, elle fera connaître son intention par une déclaration notifiée de la manière prévue à l'article 23, deuxième alinéa.

ARTICLE XXVII

Les objets et matériaux, qui ne sont pas susceptibles de servir aux usages de la guerre, ne peuvent pas être déclarés contrebande de guerre.

ARTICLE XXVIII

Ne peuvent pas être déclarés contrebande de guerre les articles suivants, savoir :

1°. Le coton brut, les laines, soies, jutes, lins, chanvres bruts, et les autres matières premières des industries textiles, ainsi que leurs filés.

2°. Les noix et graines oléagineuses ; le coprah.

3°. Les caoutchoucs, résines, gommes et laques ; le houblon.

4°. Les peaux brutes, les cornes, os et ivoires.

5°. Les engrais naturels et artificiels, y compris les nitrates et phosphates pouvant servir à l'agriculture.

6°. Les minerais.

7°. Les terres, les argiles, la chaux, la craie, les pierres y compris les marbres, les briques, ardoises et tuiles.

8°. Les porcelaines et verreries.

9°. Le papier et les matières préparées pour sa fabrication.

10°. Les savons, couleurs, y compris les matières exclusivement destinées à les produire, et les vernis.

11°. L'hypochlorite de chaux, les cendres de soude, la soude caustique, le sulfate de soude en pains, l'ammoniaque, le sulfate d'ammoniaque et le sulfate de cuivre.

12°. Les machines servant à l'agriculture, aux mines, aux industries textiles et à l'imprimerie.

13°. Les pierres précieuses, les pierres fines, les perles, la nacre et les coraux.

14°. Les horloges, pendules, et montres autres que les chronomètres.

15°. Les articles de mode et les objets de fantaisie.

16°. Les plumes de tout genre, les crins et soies.

17°. Les objets d'ameublement ou d'ornement ; les meubles et accessoires de bureau.

shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ARTICLE XXVII

Articles and material which are not susceptible of use in war may not be declared contraband of war. P. 293

ARTICLE XXVIII

The following may not be declared contraband of war :—

(1) Raw cotton, wool, sik, jute, flax, raw hemp, and other raw materials of the textile industries, and yarns of the same.

(2) Oil seeds and nuts ; copra.

(3) Rubber, resins, gums, and laces ; hops.

(4) Raw hides and horns, bones, and ivory.

(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

(6) Metallic ores.

(7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.

(8) Chinaware and glass.

(9) Paper and paper-making materials.

(10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.

(11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.

(12) Agricultural, mining, textile, and printing machinery.

(13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.

(14) Clocks and watches, other than chronometers.

(15) Fashion and fancy goods.

(16) Feathers of all kinds, hairs, and bristles.

(17) Articles of household furniture and decoration ; office furniture and requisites.

ARTICLE XXIX

Ne peuvent non plus être considérés comme contrebande de guerre :

1°. Les objets et matériaux servant exclusivement à soigner les malades et les blessés. Toutefois, ils peuvent, en cas de nécessité militaire importante, être réquisitionnés, moyennant une indemnité, lorsqu'ils ont la destination prévue à l'article 30.

2°. Les objets et matériaux destinés à l'usage du navire où ils sont trouvés, ainsi qu'à l'usage de l'équipage et des passagers de ce navire pendant la traversée.

ARTICLE XXX

Les articles de contrebande absolue sont saisissables, s'il est établi qu'ils sont destinés au territoire de l'ennemi ou à un territoire occupé par lui ou à ses forces armées. Peu importe que le transport de ces objets se fasse directement ou exige, soit un transbordement, soit un trajet par terre.

ARTICLE XXXI

La destination prévue à l'article 30 est définitivement prouvée dans les cas suivants :

1°. Lorsque la marchandise est documentée pour être débarquée dans un port de l'ennemi ou pour être livrée à ses forces armées.

2°. Lorsque le navire ne doit aborder qu'à des ports ennemis, ou lorsqu'il doit toucher à un port de l'ennemi ou rejoindre ses forces armées, avant d'arriver au port neutre pour lequel la marchandise est documentée.

ARTICLE XXXII

Les papiers de bord font preuve complète de l'itinéraire du navire transportant de la contrebande absolue, à moins que le navire soit rencontré ayant manifestement dévié de la route qu'il devrait suivre d'après ses papiers de bord et sans pouvoir justifier d'une cause suffisante de cette déviation.

ARTICLE XXXIII

Les articles de contrebande conditionnelle sont saisissables, s'il est établi qu'ils sont destinés à l'usage des forces armées ou des administrations de l'Etat ennemi, à moins, dans

ARTICLE XXIX

Likewise the following may not be treated as contraband P. 293
of war :—

(1) Articles and material serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.

(2) Articles and material intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

ARTICLE XXX

Absolute contraband is liable to capture if it is shown to P. 294
be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

ARTICLE XXXI

Proof of the destination specified in Article 30 is complete in the following cases :—

(1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.

(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

ARTICLE XXXII

Where a vessel is carrying absolute contraband, her papers P. 295
are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her paper and unable to give adequate reasons to justify such deviation.

ARTICLE XXXIII

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case

ce dernier cas, que les circonstances établissent qu'en fait ces articles ne peuvent être utilisés pour la guerre en cours ; cette dernière réserve ne s'applique pas aux envois visés par l'article 24—4°.

ARTICLE XXXIV

Il y a présomption de la destination prévue à l'article 33, si l'envoi est adressé aux autorités ennemies, ou à un commerçant établi en pays ennemi et lorsqu'il est notoire que ce commerçant fournit à l'ennemi des objets et matériaux de cette nature. Il en est de même si l'envoi est à destination d'une place fortifiée ennemie, ou d'une autre place servant de base aux forces armées ennemies ; toutefois, cette présomption ne s'applique pas au navire de commerce lui-même faisant route vers une de ces places et dont on entend établir le caractère de contrebande.

A défaut des présomptions ci-dessus, la destination est présumée innocente.

Les présomptions établies dans le présent article admettent la preuve contraire.

ARTICLE XXXV

Les articles de contrebande conditionnelle ne sont saisissables que sur le navire qui fait route vers le territoire de l'ennemi ou vers un territoire occupé par lui ou vers ses forces armées et qui ne doit pas les décharger dans un port intermédiaire neutre.

Les papiers de bord font preuve complète de l'itinéraire du navire ainsi que du lieu de déchargement des marchandises, à moins que ce navire soit rencontré ayant manifestement dévié de la route qu'il devrait suivre d'après ses papiers de bord et sans pouvoir justifier d'une cause suffisante de cette déviation.

the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

ARTICLE XXXIV

The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor (commerçant or trader) established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy government.¹ A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband. P. 296

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

ARTICLE XXXV

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port. P. 297

The ship's papers are complete proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.²

¹ The context shows that by the term *l'ennemi* the belligerent government is intended, and not private individuals; but, as doubts have been expressed on this point in the House of Commons and in the Press, a note is to be appended to the Declaration by the British Government stating that it accepts the clause in this sense.

² According to the General Report this clause must not be too strictly interpreted. The ship papers are not to be considered conclusive, if facts show their evidence to be false, the article not being intended to excuse *mala fides* or mistake, but only to prevent unwarranted captures. (See the remarks of Mr. Arthur Cohen on this subject in the *Times*, April 7, 1909.)

ARTICLE XXXVI

Par dérogation à l'article 35, si le territoire de l'ennemi n'a pas de frontière maritime, les articles de contrebande conditionnelle sont saisissables, lorsqu'il est établi qu'ils ont la destination prévue à l'article 33.

ARTICLE XXXVII

Le navire transportant des articles, qui sont saisissables comme contrebande absolue ou conditionnelle, peut être saisi, en haute mer ou dans les eaux des belligérants, pendant tout le cours de son voyage, même s'il a l'intention de toucher à un port d'escale avant d'atteindre la destination ennemie.

ARTICLE XXXVIII

Une saisie ne peut être pratiquée en raison d'un transport de contrebande antérieurement effectué et actuellement achevé.

ARTICLE XXXIX

Les articles de contrebande sont sujets à confiscation.

ARTICLE XL

La confiscation du navire transportant de la contrebande est permise, si cette contrebande forme, soit par sa valeur, soit par son poids, soit par son volume, soit par son fret, plus de la moitié de la cargaison.

ARTICLE XLI

Si le navire transportant de la contrebande est relâché les frais occasionnés au capteur par la procédure devant la juridiction nationale des prises ainsi que par la conservation du navire et de sa cargaison pendant l'instruction sont à la charge du navire.

ARTICLE XLII

Les marchandises qui appartiennent au propriétaire de la contrebande et qui se trouvent à bord du même navire sont sujettes à confiscation.

ARTICLE XXXVI

Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no sea board. P. 298

ARTICLE XXXVII

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

ARTICLE XXXVIII

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

ARTICLE XXXIX

Contraband goods are liable to confiscation.

ARTICLE XL

A vessel carrying contraband may be confiscated if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo. P. 299

ARTICLE XLI

If a vessel carrying contraband is released, she is bound to defray the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and of the custody of the ship and cargo during the proceedings.

ARTICLE XLII

Goods which belong to the owner of contraband and are found on board the same vessel as such contraband are liable to confiscation. P. 300

ARTICLE XLIII

Si un navire est rencontré en mer naviguant dans l'ignorance des hostilités ou de la déclaration de contrebande applicable à son chargement, les articles de contrebande ne peuvent être confisqués que moyennant indemnité ; le navire et le surplus de la cargaison sont exempts de la confiscation et des frais prévus par l'article 41. Il en est de même si le capitaine, après avoir eu connaissance de l'ouverture des hostilités ou de la déclaration de contrebande, n'a pu encore décharger les articles de contrebande.

Le navire est réputé connaître l'état de guerre ou la déclaration de contrebande, lorsqu'il a quitté un port neutre, après que la notification de l'ouverture des hostilités ou de la déclaration de contrebande a été faite en temps utile à la Puissance dont relève ce port. L'état de guerre est, en outre, réputé connu par le navire lorsqu'il a quitté un port ennemi après l'ouverture des hostilités.

ARTICLE XLIV

Le navire arrêté pour cause de contrebande et non susceptible de confiscation à raison de la proportion de la contrebande peut être autorisé, suivant les circonstances, à continuer sa route, si le capitaine est prêt à livrer la contrebande au bâtiment belligérant.

La remise de la contrebande est mentionnée par le capteur sur le livre de bord du navire arrêté, et le capitaine de ce navire doit remettre au capteur copie certifiée conforme de tous papiers utiles.

Le capteur a la faculté de détruire la contrebande qui lui est ainsi livrée.

CHAPITRE III.—*De l'assistance hostile*

ARTICLE XLV

Un navire neutre est confisqué et, d'une manière générale, passible du traitement que subirait un navire neutre sujet à confiscation pour contrebande de guerre

ARTICLE XLIII

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be confiscated unless compensation for it is made ; the vessel herself and the remainder of the cargo are not liable to confiscation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband. P. 300

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband,¹ if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time to reach the port. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

ARTICLE XLIV

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to confiscation, on account of the proportion of contraband on board,² may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship. P. 301

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all papers which may be of use.¹

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

CHAPTER III.—*Unneutral Service*P. 302

ARTICLE XLV

A neutral vessel is to be confiscated and, in a general way, to receive the same treatment as a neutral vessel liable to confiscation for carriage of contraband :— P. 303

¹ Cf. Art. XXIII., XXV.² Cf. Art. XL.

1°. Lorsqu'il voyage spécialement en vue du transport de passagers individuels incorporés dans la force armée de l'ennemi, ou en vue de la transmission de nouvelles dans l'intérêt de l'ennemi.

2°. Lorsqu'à la connaissance soit du propriétaire, soit de celui qui a affrété le navire en totalité, soit du capitaine, il transporte un détachement militaire de l'ennemi ou une ou plusieurs personnes qui, pendant le voyage, prêtent une assistance directe aux opérations de l'ennemi.

Dans les cas visés aux numéros précédents, les marchandises appartenant au propriétaire du navire sont également sujettes à confiscation.

Les dispositions du présent article ne s'appliquent pas si, lorsque le navire est rencontré en mer, il ignore les hostilités ou si le capitaine, après avoir appris l'ouverture des hostilités, n'a pu encore débarquer les personnes transportées. Le navire est réputé connaître l'état de guerre, lorsqu'il a quitté un port ennemi après l'ouverture des hostilités ou un port neutre postérieurement à la notification en temps utile de l'ouverture des hostilités à la Puissance dont relève ce port.

ARTICLE XLVI

Un navire neutre est confisqué et, d'une manière générale, passible du traitement qu'il subirait s'il était un navire de commerce ennemi :

1°. Lorsqu'il prend une part directe aux hostilités.

2°. Lorsqu'il se trouve sous les ordres ou sous le contrôle d'un agent placé à bord par le Gouvernement ennemi.

3°. Lorsqu'il est affrété en totalité par le Gouvernement ennemi.

4°. Lorsqu'il est actuellement et exclusivement affecté, soit au transport de troupes ennemies, soit à la transmission de nouvelles dans l'intérêt de l'ennemi.

Dans les cas visés par le présent article, les marchandises appartenant au propriétaire du navire sont également sujettes à confiscation.

(1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy or with a view to the transmission of intelligence in the interest of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to confiscation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time to reach the port.

ARTICLE XLVI

A neutral vessel is to be confiscated and, in a general way, P. 304
to receive the same treatment as would be applicable to her if she were an enemy merchant vessel :—

- (1) If she takes a direct part in the hostilities ;
- (2) If she is under the orders or control of an agent placed on board by the enemy Government ;
- (3) If she is in the exclusive employment of the enemy Government ;
- (4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to confiscation.

ARTICLE XLVII

Tout individu incorporé dans la force armée de l'ennemi, et qui sera trouvé à bord d'un navire de commerce neutre, pourra être fait prisonnier de guerre, quand même il n'y aurait pas lieu de saisir ce navire.

CHAPITRE IV.—*De la destruction des prises neutres*

ARTICLE XLVIII

Un navire neutre saisi ne peut être détruit par le capteur, mais il doit être conduit dans tel port qu'il appartiendra pour y être statué ce que de droit sur la validité de la capture.

ARTICLE XLIX

Par exception, un navire neutre, saisi par un bâtiment belligérant et qui serait sujet à confiscation, peut être détruit, si l'observation de l'article 48 peut compromettre la sécurité du bâtiment de guerre ou le succès des opérations dans lesquelles celui-ci est actuellement engagé.

ARTICLE L

Avant la destruction, les personnes qui se trouvent à bord devront être mises en sûreté, et tous les papiers de bord et autres pièces, que les intéressés estimeront utiles pour le jugement sur la validité de la capture, devront être transbordés sur le bâtiment de guerre.

ARTICLE LI

Le capteur qui a détruit un navire neutre doit, préalablement à tout jugement sur la validité de la capture, justifier en fait n'avoir agi qu'en présence d'une nécessité exceptionnelle, comme elle est prévue à l'article 49. Faute par lui de ce faire, il est tenu à indemnité vis-à-vis des intéressés, sans qu'il y ait à rechercher si la capture était valable ou non.

ARTICLE LII

Si la capture d'un navire neutre, dont la destruction a été justifiée, est ensuite déclarée nulle, le capteur doit indemniser les intéressés en remplacement de la restitution à laquelle ils auraient droit.

ARTICLE XLVII

Any individual embodied in the armed forces of the enemy P. 305
who is found on board a neutral merchant vessel, may be
made a prisoner of war, even though there be no ground for
the capture of the vessel.

CHAPTER IV.—*Destruction of Neutral Prizes*

ARTICLE XLVIII

A neutral vessel which has been captured may not be Pp. 306
destroyed by the captor ; but must be taken into such port 307
as is proper for the determination of all questions concerning
the validity of the capture.

ARTICLE XLIX

As an exception, a neutral vessel which has been captured
by a belligerent warship, and which would be liable to
confiscation, may be destroyed if the observance of Article 48
would involve danger to the safety of the warship or to the
success of the operations in which she is engaged at the time.

ARTICLE L

Before the vessel is destroyed all persons on board must P. 308
be placed in safety, and all the ship's papers and other
documents which the parties interested consider to be of use for
the purpose of deciding on the validity of the capture must
be taken on board the warship.

ARTICLE LI

A captor who has destroyed a neutral vessel must, prior to
any decision respecting the validity of the capture, establish
that he only acted in the face of an exceptional necessity
of the nature contemplated in Article 49. If he fails to do
this, he must compensate the parties interested without any
inquiry being entered into as to whether the capture was
valid or not.

ARTICLE LII

If the capture of a neutral vessel is subsequently held to
be invalid, though the act of destruction has been held to
have been justifiable, the captor must pay compensation to
the parties interested, in place of the restitution to which they
would have been entitled.

ARTICLE LIII

Si des marchandises neutres qui n'étaient pas susceptibles de confiscation ont été détruites avec le navire, le propriétaire de ces marchandises a droit à une indemnité.

ARTICLE LIV

Le capteur a la faculté d'exiger la remise ou de procéder à la destruction des marchandises confiscables trouvées à bord d'un navire qui lui-même n'est pas sujet à confiscation, lorsque les circonstances sont telles que, d'après l'article 49, elles justifieraient la destruction d'un navire passible de confiscation. Il mentionne les objets livrés ou détruits sur le livre de bord du navire arrêté et se fait remettre par le capitaine copie certifiée conforme de tous papiers utiles. Lorsque la remise ou la destruction a été effectuée et que les formalités ont été remplies, le capitaine doit être autorisé à continuer sa route.

Les dispositions des articles 51 et 52 concernant la responsabilité du capteur qui a détruit un navire neutre sont applicables.

CHAPITRE V.—*Du transfert de pavillon*

ARTICLE LV

Le transfert sous pavillon neutre d'un navire ennemi, effectué avant l'ouverture des hostilités, est valable à moins qu'il soit établi que ce transfert a été effectué en vue d'éluder les conséquences qu'entraîne le caractère de navire ennemi. Il y a néanmoins présomption de nullité si l'acte de transfert ne se trouve pas à bord, alors que le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouverture des hostilités ; la preuve contraire est admise.

Il y a présomption absolue de validité d'un transfert effectué plus de trente jours avant l'ouverture des hostilités, s'il est absolu, complet, conforme à la législation des pays intéressés, et s'il a cet effet que le contrôle du navire et le bénéfice de son emploi ne restent pas entre les mêmes mains qu'avant le transfert. Toutefois, si le navire a perdu la nationalité belligérante moins de soixante jours avant l'ouver-

ARTICLE LIII

If neutral goods not liable to confiscation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

ARTICLE LIV

The captor has the right to demand the handing over, or P. 309
to proceed himself to the destruction of, any goods liable to confiscation found on board a vessel not herself liable to confiscation, provided that the circumstances are such as would, under Article 49, justify the destruction of a vessel, herself liable to confiscation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all papers which may be of use. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

CHAPTER V.—*Transfer to a Neutral Flag*

P. 310

ARTICLE LV

The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which a vessel of enemy character is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belli-

ture des hostilités et si l'acte de transfert ne se trouve pas à bord, la saisie du navire ne pourra donner lieu à des dommages et intérêts.

ARTICLE LVI

Le transfert sous pavillon neutre d'un navire ennemi, effectué après l'ouverture des hostilités, est nul, à moins qu'il soit établi que ce transfert n'a pas été effectué en vue d'éluder les conséquences qu'entraîne le caractère de navire ennemi.

Toutefois, il y a présomption absolue de nullité :

1°. Si le transfert a été effectué pendant que le navire est en voyage ou dans un port bloqué.

2°. S'il y a faculté de réméré ou de retour.

3°. Si les conditions, auxquelles est soumis le droit de pavillon d'après la législation du pavillon arboré, n'ont pas été observées.

CHAPITRE VI.—*Du caractère ennemi*

ARTICLE LVII

Sous réserve des dispositions relatives au transfert de pavillon, le caractère neutre ou ennemi du navire est déterminé par le pavillon qu'il a le droit de porter.

Le cas où le navire neutre se livre à une navigation réservée en temps de paix reste hors de cause et n'est nullement visé par cette règle.

ARTICLE LVIII

Le caractère neutre ou ennemi des marchandises trouvées à bord d'un navire ennemi est déterminé par le caractère neutre ou ennemi de leur propriétaire.

ARTICLE LIX

Si le caractère neutre de la marchandise trouvée à bord d'un navire ennemi n'est pas établi, la marchandise est présumée ennemie.

gerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages or interest.

ARTICLE LVI

The transfer of an enemy vessel to a neutral flag, effected P. 311 after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which a vessel of enemy character is exposed.

There, however, is an absolute presumption that a transfer is void :—

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vendor.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing have not been fulfilled.

CHAPTER VI.—*Enemy Character*

P. 312

ARTICLE LVII

Subject to the provisions respecting transfer to another P. 313 flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

ARTICLE LVIII

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.¹

ARTICLE LIX

In the absence of proof of the neutral character of goods P. 314 found on board an enemy vessel, they are presumed to be enemy goods.

¹ On the question whether the neutral or enemy character of the owner is to be determined by his nationality or by his domicile, about which the Conference was unable to agree, see p. 279.

ARTICLE LX

Le caractère ennemi de la marchandise chargée à bord d'un navire ennemi subsiste jusqu'à l'arrivée à destination, nonobstant un transfert intervenu pendant le cours de l'expédition, après l'ouverture des hostilités.

Toutefois, si, antérieurement à la capture, un précédent propriétaire neutre exerce, en cas de faillite du propriétaire ennemi actuel, un droit de revendication légale sur la marchandise, celle-ci reprend le caractère neutre.

CHAPITRE VII.—*Du convoi*

ARTICLE LXI

Les navires neutres sous convoi de leur pavillon sont exempts de visite. Le commandant du convoi donne par écrit, à la demande du commandant d'un bâtiment de guerre belligérant, sur le caractère des navires et sur leur chargement, toutes informations que la visite servirait à obtenir.

ARTICLE LXII

Si le commandant du bâtiment de guerre belligérant a lieu de soupçonner que la religion du commandant du convoi a été surprise, il lui communique ses soupçons. C'est au commandant du convoi seul qu'il appartient en ce cas de procéder à une vérification. Il doit constater le résultat de cette vérification par un procès-verbal dont une copie est remise à l'officier du bâtiment de guerre. Si des faits ainsi constatés justifient, dans l'opinion du commandant du convoi, la saisie d'un ou de plusieurs navires, la protection du convoi doit leur être retirée.

CHAPITRE VIII.—*De la résistance à la visite.*

ARTICLE LXIII

La résistance opposée par la force à l'exercice légitime du droit d'arrêt, de visite et de saisie entraîne, dans tous les cas, la confiscation du navire. Le chargement est passible du même traitement que subirait le chargement d'un navire ennemi ; les marchandises appartenant au capitaine ou au propriétaire du navire sont considérées comme marchandises ennemies.

ARTICLE LX

Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded. P. 315

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a right to reclaim their legal ownership, they regain their neutral character.

CHAPTER VII.—*Convoy*

ARTICLE LXI

Neutral vessels under convoy of their flag are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search. P. 316

ARTICLE LXII

If the commander of the belligerent warship has reason to suspect that the faith of the commander of the convoy has been misplaced, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels. P. 317

CHAPTER VIII.—*Resistance to Search*

ARTICLE LXIII

Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the confiscation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods. P. 318

CHAPITRE IX.—*Des dommages et intérêts.*

ARTICLE LXIV

Si la saisie du navire ou des marchandises n'est pas validée par la juridiction des prises ou si, sans qu'il y ait eu de mise en jugement, la saisie n'est pas maintenue, les intéressés ont droit à des dommages et intérêts, à moins qu'il y ait eu des motifs suffisants de saisir le navire ou les marchandises.

Dispositions Finales

ARTICLE LXV

Les dispositions de la présente Déclaration forment un ensemble indivisible.

ARTICLE LXVI

Les Puissances Signataires s'engagent à s'assurer, dans le cas d'une guerre où les belligérants seraient tous parties à la présente Déclaration, l'observation réciproque des règles contenues dans cette Déclaration. Elles donneront, en conséquence, à leurs autorités et à leurs forces armées les instructions nécessaires et prendront les mesures qu'il conviendra pour en garantir l'application par leurs tribunaux, spécialement par leurs tribunaux de prises.

ARTICLE LXVII

La présente Déclaration sera ratifiée aussitôt que possible.

Les ratifications seront déposées à Londres.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les Représentants des Puissances qui y prennent part, et par le Principal Secrétaire d'État de Sa Majesté Britannique au Département des Affaires Étrangères.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement Britannique et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt des ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification qui les

CHAPTER IX.—*Damages and Interest*

P. 319

ARTICLE LXIV

If the capture of a vessel or of goods is not upheld by the prize court, or if the prize is released without any judgment being given, the parties interested have the right to damages and interest, unless there were good reasons for capturing the vessel or goods.

Final Provisions

ARTICLE LXV

The provisions of the present Declaration must be treated P. 322 as a whole, and cannot be separated.

ARTICLE LXVI

The Signatory Powers undertake to insure in any war in which all belligerents are parties to the present Declaration the mutual observance of its rules. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

ARTICLE LXVII

The present Declaration shall be ratified as soon as possible. The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of

accompagnent, sera immédiatement, par les soins du Gouvernement Britannique et par la voie diplomatique, remise aux Puissances Signataires. Dans les cas visés par l'alinéa précédent, le dit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

ARTICLE LXVIII

La présente Déclaration produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement, soixante jours après que la notification de leur ratification aura été reçue par le Gouvernement Britannique.

ARTICLE LXIX

S'il arrivait qu'une des Puissances Signataires voulût dénoncer la présente Déclaration, elle ne pourra le faire que pour la fin d'une période de douze ans commençant à courir soixante jours après le premier dépôt de ratifications et, ensuite, pour la fin de périodes successives de six ans, dont la première commencera à l'expiration de la période de douze ans.

La dénonciation devra être, au moins un an à l'avance, notifiée par écrit au Gouvernement Britannique, qui en donnera connaissance à toutes les autres Puissances.

Elle ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

ARTICLE LXX

Les Puissances représentées à la Conférence Navale de Londres, attachant un prix particulier à la reconnaissance générale des règles adoptées par elles, expriment l'espoir que les Puissances qui n'y étaient pas représentées adhéreront à la présente Déclaration. Elles prient le Gouvernement Britannique de vouloir bien les inviter à le faire.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement Britannique, en lui transmettant l'acte

ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

ARTICLE LXVIII

The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

ARTICLE LXIX

In the event of one of the Signatory Powers wishing to P. 323
denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.¹

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

ARTICLE LXX

The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simul-

¹ Cf. Int. Prize Court Convention, art. lv. p. 204, and Draft Convention Court of Arbitral Justice, p. 228. The length of the periods prescribed is noticeable.

d'adhésion, qui sera déposé dans les archives dudit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification, ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification. L'adhésion produira effet soixante jours après cette date.

La situation des Puissances adhérentes sera, en tout ce qui concerne cette Déclaration, assimilée à la situation des Puissances Signataires.

ARTICLE LXXI

La présente Déclaration, qui portera la date du 26 février 1909, pourra être signée à Londres jusqu'au 30 juin 1909, par les Plénipotentiaires des Puissances représentées à la Conférence Navale.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Déclaration de leurs signatures et y ont apposé leurs cachets.

Fait à Londres, le vingt-six février mil neuf cent neuf, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement Britannique et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances représentées à la Conférence Navale.

(Suivent les signatures.)

taneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the Signatory Powers.

ARTICLE LXXI

The present Declaration, which bears the date of the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference. P. 323

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

(Here follow the signatures.)

No. 18.

GENERAL REPORT PRESENTED TO THE NAVAL
CONFERENCE ON BEHALF OF ITS DRAFTING
COMMITTEE.¹

*(Translation.)*²

ON the 27th February, 1908, the British Government addressed a circular to various Powers inviting them to meet at a Conference with the object of reaching an agreement as to the definition of the generally recognised principles of international law in the sense of Article 7, paragraph 2, of the Convention signed at The Hague on the 18th October, 1907, for the establishment of an International Prize Court (see p. 192). This agreement appeared necessary to the British Government on account of certain divergences of view which had become apparent at the second Peace Conference in connection with the settlement of various important questions of international maritime law in time of war. The existence of these divergent views might, it seemed, render difficult the acceptance of the International Prize Court, as the power of this Court would be the more extended in proportion as the rules to be applied by it were more uncertain.

The British Government suggested that the following questions might form the programme of the proposed Conference, and invited

¹ This Committee consisted of Messrs. Kriege (*Germany*), Wilson (*United States of America*), Dumba (*Austria-Hungary*), Estrada (*Spain*), Renault (*France*) Reporter, Hurst (*Great Britain*), Ricci-Busatti (*Italy*), Sakamoto (*Japan*), Ruyssenaers (*Netherlands*), Baron Taube (*Russia*).

² For the original French text of the Report see Parliamentary Paper 'Miscellaneous No. 5 (1909),' p. 342. The British Delegates in their Report to Sir Edward Grey refer to the General Report in the following terms: 'Attached to these Minutes is, among other papers, the General Report to the Conference prepared by M. Renault. We desire to call your particular attention to this document, which contains a most lucid explanatory and critical commentary on the provisions of the Declaration. It should be borne in mind that, in accordance with the principles and practice of Continental jurisprudence, such a report is considered an authoritative statement of the meaning and intention of the instrument which it explains, and that consequently foreign Governments and Courts, and, no doubt, also the International Prize Court, will construe and interpret the provisions of the Declaration by the light of the commentary given in the Report.'—Parliamentary Paper, 'Miscellaneous No. 5 (1909),' pp. 9-14. Cf. final paragraph of Report, p. 279.

the Powers to express their views regarding them in preparatory Memoranda :

(a) *Contraband, including the circumstances under which particular articles can be considered as contraband ; the penalties for their carriage ; the immunity of a ship from search when under convoy ; and the rules with regard to compensation where vessels have been seized but have been found in fact only to be carrying innocent cargo ;*

(b) *Blockade, including the questions as to the locality where seizure can be effected, and the notice that is necessary before a ship can be seized ;*

(c) *The doctrine of continuous voyage in respect both of contraband and of blockade ;*

(d) *The legality of the destruction of neutral vessels prior to their condemnation by a prize court ;*

(e) *The rules as to neutral ships or persons rendering ' unneutral service ' (' assistance hostile ') ;*

(f) *The legality of the conversion of a merchant-vessel into a war-ship on the high seas ;*

(g) *The rules as to the transfer of merchant-vessels from a belligerent to a neutral flag during or in contemplation of hostilities ;*

(h) *The question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property.*

The invitations were accepted, and the Conference met on the 4th December last.¹ The British Government had been so good as to assist its deliberations by presenting a collection of papers which quickly became known among us by the name of *the Red Book*, and which, after a short introduction, contains a ' Statement of the views expressed by the Powers in their Memoranda, and observations intended to serve as a basis for the deliberations of the Conference.' These are the ' bases of discussion ' which served as a starting-point for the examination of the chief questions of existing international maritime law.² The Conference could not but express its gratitude for this valuable preparatory work, which was of great assistance to it. It made it possible to observe, in the first place, that the divergences in the practices and doctrines

¹ The Conference was limited to the principal Naval Powers—viz., Austria-Hungary, France, Germany, Great Britain, Italy, Japan, Russia, Spain, the United States of America, except that the Netherlands were also included in it (*cf.* Introduction, p. ix). But other Powers are to be expressly invited to accede to the Declaration, so that it may become general law. *Cf.* Art. LXX. p. 273. Declaration of Paris, p. 1.

² To assist it in preparing the bases of discussion the British Government called in the services of the eminent French jurist M. Fromageot.

of the different countries were perhaps less wide than was generally believed, that the essential ideas were often the same in all countries, and that the methods of application alone varied with traditions or prejudices, with permanent or accidental interests. It was, therefore, possible to extract a common element which it could be agreed to recommend for uniform application. This is the end to which the efforts of the different Delegations tended, and they vied with one another in their zeal in the search for the grounds of a common understanding. Their efforts were strenuous, as is shown by the prolonged discussions of the Conference, the Grand Committee, and the Examining Committees, and by the numerous proposals which were presented. Sailors, diplomatists, and jurists cordially co-operated in a work the description of which, rather than a final estimate of its essential value, is the object of this Report, as our impartiality might naturally be suspected.

The body of rules contained in the *Declaration*, which is the result of the deliberations of the Naval Conference, and which is to be entitled *Declaration concerning the laws of naval war*, answers well to the desire expressed by the British Government in its invitation of February 1908. The questions in the programme are all settled except two, with regard to which explanations will be given later. The solutions have been extracted from the various views or practices which prevail and represent what may be called the *media sententia*. They are not always in absolute agreement with the views peculiar to each country, but they shock the essential ideas of none. They must not be examined separately, but as a whole, otherwise there is a risk of the most serious misunderstandings. In fact, if one or more isolated rules are examined either from the belligerent or the neutral point of view, the reader may find that the interests with which he is especially concerned are jeopardised by the adoption of these rules. But they have another side. The work is one of compromise and mutual concessions. Is it, as a whole, a good one ?

We confidently hope that those who study it seriously will answer that it is. The Declaration puts uniformity and certainty in the place of the diversity and obscurity from which international relations have too long suffered. The Conference has tried to reconcile in an equitable and practical way the rights of belligerents with those of neutral commerce ; it consists of Powers whose conditions, from the political, economic, and geographical points of view, vary considerably. There is therefore reason to suppose that the rules on which these Powers have agreed take sufficient account of the different interests involved, and hence may be accepted without objection by all the others.

The Preamble of the Declaration summarises the general ideas just set forth (see pp. 255, 256).

What is the scope of application of the rules thus laid down? They must be observed in the relations between the signatory parties, since those parties acknowledge them as principles of recognised international law and, besides, expressly bind themselves to secure the benefit of them for one another. The Signatory Powers who are or will be parties to the Convention establishing the International Prize Court will have, besides, an opportunity of having these rules applied to disputes in which they are concerned, whether the Court regards them as generally recognised rules, or takes account of the pledge given to observe them. It is moreover to be hoped that these rules will before long be accepted by the majority of States, who will recognise the advantage of substituting exact provisions for more or less indefinite usages which tend to give rise to controversy.

It has been said above that two points in the programme of the Conference were not decided.

1. The programme mentions under head (f) : *the legality of the conversion of a merchant vessel into a warship on the high seas*. The conflicting views on this subject which became apparent at the Conference of The Hague in 1907, have recurred at the present Conference. It may be concluded, both from the statements in the Memoranda and from the discussion, that there is no generally accepted rule on this point, nor do there appear to be any precedents which can be adduced. Though the two opposite opinions were defended with great warmth, a lively desire for an understanding was expressed on all sides; everybody was at least agreed that it would be a great advantage to put an end to uncertainty. Serious efforts were made to do justice to the interests espoused by both sides, but these unfortunately failed. A subsidiary question dependent on the previous one, on which, at one moment, it appeared possible to come to an agreement, is that of *reconversion*. According to one proposal, it was to be laid down that 'merchant vessels converted into warships cannot be reconverted into merchant vessels during the whole course of the war.' The rule was absolute and made no distinction as regards the place where reconversion could be effected; it was dictated by the idea that such reconversion would always have disadvantages, would be productive of surprises, and lead to actual frauds. As unanimity in favour of this proposal was not forthcoming, a subsidiary one was brought forward, viz., 'the conversion of a warship into a merchant vessel on the high seas is forbidden during the war.' The case had in view was that of a warship (generally a recently converted merchant vessel)

doffing its character, so as to be able freely to revictual or refit in a neutral port without being bound by the restrictions imposed on warships. Will not the position of the neutral State between two belligerents be delicate, and will not such State expose itself to reproach whether it treats the newly converted ship as a merchant vessel or as a warship? Agreement might perhaps have been reached on this proposal, but it seemed very difficult to deal with this secondary aspect of a question which there was no hope of settling as a whole. This was the decisive reason for the rejection of all proposals.

The question of conversion on the high seas and that of reconversion therefore remain open.¹

2. Under head (*h*), the British Programme mentions: *the question whether the nationality or the domicile of the owner should be adopted as the dominant factor in deciding whether property is enemy property*. This question was subjected to a searching examination by a special Committee, which had to acknowledge the uncertainty of actual practice; it was proposed to put an end to this by the following provisions:—

‘The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy nationality of their owner, or, if he is of no nationality or of double nationality (*i.e.*, both neutral and enemy), by his domicile in a neutral or enemy country;

‘Provided that goods belonging to a limited liability or joint stock company are considered as neutral or enemy according as the company has its headquarters in a neutral or enemy country.’

Unanimity not being forthcoming, these provisions remained without effect.

We now reach the explanation of the Declaration itself, on which we shall try, by summarising the Reports already approved by the Conference, to give an exact and uncontroversial commentary; this, when it has become an official commentary by receiving the approval of the Conference, may serve as a guide to the different authorities—administrative, military, and judicial—who may be called on to apply it.

¹ Cf. H.C. 1907, Conv. VII. p. 156, &c.

PRELIMINARY PROVISION

This provision dominates all the rules which follow. Its spirit has been indicated in the general remarks to be found at the beginning of this Report. The purpose of the Conference has, above all, been to note, to define, and, where needful, to complete what might be considered as customary law.

CHAPTER I

BLOCKADE IN TIME OF WAR

Blockade is here regarded solely as an operation of war, and there is no intention of touching in any way on what is called *pacific blockade*.

Article 1. (See p. 256)

Blockade, as an operation of war, can be directed by a belligerent only against his adversary. This very simple rule is laid down at the start, but its full scope is apparent only when it is read in connection with Article 18.

Article 2. (See p. 256)

The first condition necessary to render a blockade binding is that it should be effective. There has been universal agreement on this subject for a long time. As for the definition of an effective blockade, we thought that we had only to adopt the one to be found in the Declaration of Paris of the 16th April, 1856, which, conventionally, binds a great number of States, and is in fact accepted by the rest.

Article 3. (See p. 256)

It is easily to be understood that difficulties often arise on the question whether a blockade is effective or not ; opposing interests are at stake. The blockading belligerent wishes to economise his efforts, and neutrals desire their trade to be as little hampered as possible. Diplomatic protests have sometimes been made on this subject. The point may be a delicate one, because no absolute rule can be laid down as to the number and position of the blockading ships. All depends on matters of fact and geographical conditions. In one case a single ship will suffice to blockade a port as effectively as possible, whereas in another a whole fleet may not be enough really to prevent access to one or more ports declared to be blockaded. It is therefore essentially a *question of fact*, to be decided on the

merits of each case, and not according to a formula drawn up beforehand. Who shall decide it? The judicial authority. This will be, in the first place, the national tribunal which is called on to pronounce as to the validity of the prize, and which the vessel captured for breach of blockade can ask to declare the capture void, because the blockade, not being effective, was not binding. This resort has always existed; it may not always have given satisfaction to the Powers concerned, because they may have thought that the national tribunal was rather naturally led to consider effective the blockade declared to be so by its Government. But, when the International Prize Court Convention comes into force, there will be an absolutely impartial tribunal, to which neutrals may apply, and which will decide whether, in a given case, the blockade was effective or not. The possibility of this resort, besides allowing certain injustices to be redressed, will most likely have a preventive effect, in that a Government will take care to establish its blockades in such a way that their effect cannot be annulled by decisions which would inflict on it a heavy loss. The full scope of Article 3 is thus seen when it is understood that the question with which it deals must be settled by a Court. The foregoing explanation is inserted in the Report at the request of the Committee, in order to remove all possibility of misunderstanding.

Article 4. (See p. 257).

It is not enough for a blockade to be established; it must be maintained. If it is raised it may be re-established, but this requires the observance of the same formalities as though it were established for the first time. By tradition, a blockade is not regarded as raised when it is in consequence of stress of weather that the blockading forces are temporarily withdrawn. This is laid down in Article 4. It must be considered limitative in the sense that stress of weather is the only form of compulsion which can be alleged. If the blockading forces were withdrawn for any other reason, the blockade would be regarded as raised, and, if it were resumed, Articles 12 (last rule) and 13 would apply.

Article 5. (See p. 257)

Blockade, as an operation of lawful warfare, must be respected by neutrals in so far as it really remains an operation of war which has the object of interrupting all commercial relations with the blockaded port. It may not be made the means of allowing a belligerent to favour the vessels of certain nations by letting them pass. This is the point of Article 5.

Article 6. (See p. 257)

Does the prohibition which applies to all merchant vessels apply also to warships ? No definite reply can be given. The commander of the blockading forces may think it useful to cut off all communication with the blockaded place, and refuse access to neutral warships ; no rule is imposed on him. If he lets them in, it is as a matter of courtesy. If a rule has been drawn up merely to lay down this, it is in order that it may not be claimed that a blockade has ceased to be effective on account of leave granted to such and such neutral warships.

The blockading commander must act impartially, as stated in Article 5. Nevertheless, the mere fact that he has let a warship pass does not oblige him to let pass all neutral warships which may come. It is a question of judgment. The presence of a neutral warship in a blockaded port may not have the same consequences at all stages of the blockade, and the commander must be left free to judge whether he can be courteous without making any sacrifice of his military interests.

Article 7. (See p. 257)

Distress can explain the entrance of a neutral vessel into a blockaded place, for instance, if she is in want of food or water, or needs immediate repairs. As soon as her distress is acknowledged by an authority of the blockading force, she *may* cross the line of blockade ; it is not a favour which she has to ask of the humanity or courtesy of the blockading authority. The latter may deny the state of distress, but when once it is proved to exist, the consequence follows of itself. The vessel which has thus entered the blockaded port will not be obliged to remain there for the whole duration of the blockade ; she may leave as soon as she is fit to do so, when she has obtained the food or water which she needs, or when she has been repaired. But the leave granted to her must not be made an excuse for commercial transactions ; therefore she is forbidden to discharge or ship any cargo.

It is needless to say that a blockading squadron which insisted on preventing a vessel in distress from passing, might do so if they afforded her the help which she needed.

Article 8. (See p. 257)

Independently of the condition prescribed by the Declaration of Paris that it must be effective, a blockade, to be binding, must be *declared* and *notified*. Article 8 confines itself to laying down the principle which is applied by the following Articles.

To remove all possibility of misunderstanding it is enough to define clearly the meaning of these two expressions, which will frequently be used. The *declaration of blockade* is the act of the competent authority (a Government or commander of a squadron) stating that a blockade is, or is about to be, established under conditions to be specified (Article 9). The *notification* is the fact of bringing the declaration of blockade to the knowledge of the neutral Powers or of certain authorities (Article 11).

These two things—declaration and notification—will in most cases be done previously to the enforcement of the rules of blockade, that is to say, to the real prohibition of passage. Nevertheless, as we shall see later, it is sometimes possible for passage to be forbidden by the very fact of the blockade which is brought to the knowledge of a vessel approaching a blockaded port by means of a *notification* which is *special*, whereas the notification which has just been defined, and which is spoken of in Article 11, is of a general character.

Article 9. (See p. 257)

The declaration of blockade in most cases emanates from the belligerent Government itself. That Government may have left the commander of its naval forces free himself to declare a blockade according to the circumstances. There will not, perhaps, be as much reason as formerly to give this discretion, because of the ease and rapidity of communication. This, being merely an internal question, matters little.

The declaration of blockade must specify certain points which it is in the interest of neutrals to know, in order to be aware of the extent of their obligations. The moment from which it is forbidden to communicate with the blockaded place must be exactly known. It is important, as affecting the obligations both of the blockading Power and of neutrals, that there should be no uncertainty as to the places really blockaded. Finally, the custom has long been established of allowing neutral vessels which are in the blockaded port to leave it. This custom is here confirmed, in the sense that the blockading Power *must allow* a period within which vessels may leave; the length of this period is not fixed, because it clearly depends on very varying circumstances, but it is understood that the period should be *reasonable*.

Article 10. (See p. 257)

The object of this article is to insure the observance of Article 9. Supposing the declaration of blockade contains statements which do not tally with the actual facts; it states that the blockade

began, or will begin, on such a day, whereas, in fact, it only began several days later. Its geographical limits are inaccurately given ; they are wider than those within which the blockading forces are operating. What shall be the sanction ? The nullity of the declaration of blockade, which prevents it from being operative. If then, in such a case, a neutral vessel is captured for breach of blockade, she can refer to the nullity of the declaration of blockade as a plea for the nullity of the capture ; if her plea is rejected by the national tribunal, she can appeal to the International Court.

To avoid misunderstandings, the significance of this provision must be noticed. The declaration states that the blockade begins on the 1st February, it really only begins on the 8th. It is needless to say that the declaration had no effect from the 1st to the 8th, because at that time there was no blockade at all ; the declaration states a fact, but does not take the place of one. The rule goes further : the declaration shall not even be operative from the 8th onwards ; it is definitely void, and another must be made.

There is no question here of cases where Article 9 is disregarded by neglect to allow neutral vessels in the blockaded port time to leave it. The sanction could not be the same. There is no reason to annul the declaration as regards neutral vessels wishing to enter the blockaded port. A special sanction is needed in that case, and it is provided by Article 16, paragraph 2.

Article 11. (See p. 258)

A declaration of blockade is not valid unless notified. The observance of a rule can only be required by those who have the opportunity of knowing it.

Two notifications must be made :—

1. The first is addressed to neutral Powers by the belligerent Power, which communicates it to the Governments themselves or to their representatives accredited to it. The communication to the Governments will in most cases be made through the diplomatic agents ; it might happen that a belligerent had no diplomatic relations with a neutral country ; he will then address himself, ordinarily by telegraph, directly to the Government of that country. It is the duty of the neutral Governments advised of the declaration of blockade to take the necessary measures to dispatch the news to the different parts of their territory, especially their ports.

2. The second notification is made by the commander of the blockading force to the local authorities. These must inform, as soon as possible, the foreign Consuls residing at the blockaded place or on the blockaded coastline. These authorities would be

responsible for the neglect of this obligation. Neutrals might suffer loss from the fact of not having been informed of the blockade in sufficient time.

Article 12. (See p. 258)

Supposing a blockade is extended beyond its original limits : as regards the new part, it is a new blockade and, in consequence, the rules as to declaration and notification must be applied to it. The same is true in cases where a blockade is re-established after having been raised ; the fact that a blockade has already existed in the same locality must not be taken into account.

Article 13. (See p. 258)

If it is indispensable to know of the establishment of a blockade, it would at least be useful for the public to be told of its raising, since it puts an end to the restrictions imposed on the relations of neutrals with the blockaded port. It has therefore been thought fit to ask the Power which raises a blockade to make known the fact in the form in which it has notified the establishment of the blockade (Article 11). Only it must be observed that the sanction could not be the same in the two cases. To ensure the notification of the declaration of blockade there is a direct and adequate sanction : an unnotified blockade is not binding. In the case of the raising there can be no parallel to this. The public will really gain by the raising, even without being told of it officially. The blockading Power which did not notify the raising would expose itself to diplomatic remonstrances on the ground of the nonfulfilment of an international duty. This nonfulfilment will have more or less serious consequences, according to circumstances. Sometimes the raising of the blockade will really have become known at once, and official notification would add nothing to this effective publicity.

It is needless to add that only the *voluntary* raising of a blockade is here in question ; if the blockading force has been driven off by the arrival of enemy forces, it cannot be held bound to make known its defeat, which its adversary will undertake to do without delay. Instead of raising a blockade, a belligerent may confine himself to restricting it ; he only blockades one port instead of two. As regards the port which ceases to be included in the blockade, it is a case of voluntary raising, and consequently the same rule applies.

Article 14. (See p. 258)

For a vessel to be liable to capture for breach of blockade, the first condition is that she must be aware of the blockade, because it is not just to punish some one for breaking a rule which he does

not know. Nevertheless, there are circumstances in which, even in the absence of proof of actual knowledge, knowledge may be presumed, the right of rebutting this presumption being always reserved to the party concerned (Article 15).

Article 15. (See p. 258)

A vessel has left a neutral port subsequently to the notification of the blockade made to the Powers to which the port belongs. Was this notification made in sufficient time, that is to say, so as to reach the port in question, where it had to be published by the port authorities? That is a question of fact to be examined. If it is settled affirmatively, it is natural to suppose that the vessel was aware of the blockade at the time of her departure. This presumption is not however absolute, and the right to adduce proof to the contrary is reserved. It is for the incriminated vessel to furnish it, by showing that circumstances existed which explain her ignorance.

Article 16. (See p. 258)

A vessel is supposed to be approaching a blockaded port without its being possible to tell whether she knows or is presumed to know of the existence of the blockade; no notification in the sense of Article 11 has reached her. In that case a special notification is necessary, in order that the vessel may be duly informed of the fact of the blockade. This notification is made to the vessel herself by an officer of one of the warships of the blockading force, and is entered on the vessel's logbook. It may be made to the vessels of a convoyed fleet by a neutral warship through the commander of the convoy, who acknowledges receipt of it and takes the necessary measures to have the notification entered on the logbook of each vessel. The entry notes the time and place where it is made, and the names of the blockaded places. The vessel is prevented from passing, and the blockade is thus made *binding* for her, though not *previously* notified; this adverb is therefore omitted in Article 8. It cannot be admitted that a merchant vessel should claim to disregard a real blockade, and to break it for the sole reason that she was not personally aware of it. But, though she may be prevented from passing, she may only be captured when she tries to break blockade after receiving the notification. This special notification is seen to play a very small part, and must not be confused with the special notification absolutely insisted on by the practice of certain navies.

What has just been said refers to the vessel coming in. The vessel leaving the blockaded port must also be considered. If a

regular notification of the blockade has been made to the local authorities (Article 11 (2)), the position is simple: the vessel is, or is presumed to be, aware of the blockade, and is therefore liable to capture in case she has not kept to the period for leaving allowed by the blockading Power. But it may happen that no declaration of blockade has been notified to the local authorities, or that that declaration has contained no mention of the period allowed for leaving, in spite of the rule prescribed by Article 9 (3). The sanction of the blockading Power's offence is that the vessel must be allowed to go free. It is a strong sanction, which corresponds exactly with the nature of the offence committed, and will be the best means of preventing its commission.

It is needless to say that this provision only concerns vessels to which the period allowed for leaving would have been of use—that is to say, neutral vessels which were in the port at the time when the blockade was established; it has nothing to do with vessels which are in the port after having broken blockade.

The commander of the blockading squadron may always repair his omission or mistake, make a notification of the blockade to the local authorities, or complete that which he has already made.

As is seen from these explanations, the most ordinary case is assumed—that in which the absence of notification implies negligence on the part of the commander of the blockading forces. The situation is clearly altogether changed if the commander has done all in his power to make the notification, but has been prevented from doing so by lack of good-will on the part of the local authorities, who have intercepted all communications from outside. In that case he cannot be forced to let pass vessels which wish to leave, and which, in the absence of the prescribed notification and of presumptive knowledge of the blockade, are in a position similar to that contemplated in Article 16, paragraph 1.

Article 17. (See p. 259)

The other condition of the liability of a vessel to capture is that she should be found within the area of operations of the warships detailed to make the blockade effective; it is not enough that she should be on her way to the blockaded port.

As for what constitutes the *area of operations*, an explanation has been given which has been universally accepted, and is quoted here as furnishing the best commentary on the rule laid down by Article 17:—

‘When a Government decides to undertake blockading operations against some part of the enemy coast it details a certain

number of warships to take part in the blockade, and intrusts the command to an officer whose duty is to use them for the purpose of making the blockade effective. The commander of the naval force thus formed posts the ships at his disposal according to the line of the coast and the geographical position of the blockaded places, and instructs each ship as to the part which she has to play, and especially as to the zone which she is to watch. All the zones watched taken together, and so organised as to make the blockade effective, form the area of operations of the blockading naval force.

‘The area of operations so constituted is intimately connected with the effectiveness of the blockade, and also with the number of ships employed on it.

‘Cases may occur in which a single ship will be enough to keep a blockade effective—for instance, at the entrance of a port, or at the mouth of a river with a small estuary, so long as circumstances allow the blockading ship to stay near enough to the entrance. In that case the area of operations is itself near the coast. But, on the other hand, if circumstances force her to remain far off, one ship may not be enough to secure effectiveness, and to maintain this she will then have to be supported by others. From this cause the area of operations becomes wider, and extends further from the coast. It may therefore vary with circumstances, and with the number of blockading ships, but it will always be limited by the condition that effectiveness must be assured.

‘It does not seem possible to fix the limits of the area of operations in definite figures, any more than to fix beforehand and definitely the number of ships necessary to assure the effectiveness of any blockade. These points must be settled according to circumstances in each particular case of a blockade. This might perhaps be done at the time of making the declaration.

‘It is clear that a blockade will not be established in the same way on a defenceless coast as on one possessing all modern means of defence. In the latter case there could be no question of enforcing a rule such as that which formerly required that ships should be stationary and sufficiently close to the blockaded places; the position would be too dangerous for the ships of the blockading force, which, besides, now possess more powerful means of watching effectively a much wider zone than formerly.

‘The area of operations of a blockading naval force may be rather wide, but, as it depends on the number of ships contributing to the effectiveness of the blockade, and is always limited by the condition that it should be effective, it will never reach distant seas where merchant vessels sail which are, perhaps, making for

the blockaded ports, but whose destination is contingent on the changes which circumstances may produce in the blockade during their voyage. To sum up, the idea of the area of operations joined with that of effectiveness, as we have tried to define it, that is to say, including the zone of operations of the blockading forces, allows the belligerent effectively to exercise the right of blockade which he admittedly possesses and, on the other hand, saves neutrals from exposure to the drawbacks of blockade at a great distance, while it leaves them free to run the risk which they knowingly incur by approaching points to which access is forbidden by the belligerent.'

Article 18. (See p. 259)

This rule has been thought necessary the better to protect the commercial interests of neutral countries ; it completes Article 1, according to which a blockade must not extend beyond the ports and coasts of the enemy, which implies that, as it is an operation of war, it must not be directed against a neutral port, in spite of the importance to a belligerent of the part played by that neutral port in supplying his adversary.

Article 19. (See p. 259)

It is the true destination of the vessel which must be considered when a breach of blockade is in question, and not the ulterior destination of the cargo. Proof or presumption of the latter is therefore not enough to justify the capture, for breach of blockade, of a ship actually bound for an unblockaded port. But the cruiser might always prove that this destination to an unblockaded port is only apparent, and that in reality the immediate destination of the vessel is the blockaded port.

Article 20. (See p. 259)

A vessel has left the blockaded port or has tried to enter it. Shall she remain indefinitely liable to capture ? To reply by an absolute affirmative would be to go too far. This vessel must remain liable to capture so long as she is pursued by a ship of the blockading force ; it would not be enough for her to be encountered by a cruiser of the blockading enemy which did not belong to the blockading squadron. The question whether or not the pursuit is abandoned is one of fact ; it is not enough that the vessel should take refuge in a neutral port. The ship which is pursuing her can wait till she leaves it, so that the pursuit is necessarily suspended but not abandoned. Capture is no longer possible when the blockade has been raised.

Article 21. (See p. 259)

The vessel is condemned in all cases. The cargo is also condemned on principle, but the interested party is allowed to oppose a plea of good faith, that is to say, to prove that, when the goods were shipped, the shipper did not know and could not have known of the intention to break the blockade.

CHAPTER II

CONTRABAND OF WAR

This chapter is one of the most, if not the most important, of the Declaration. It deals with a matter which has sometimes given rise to serious disputes between belligerents and neutrals. Therefore regulations to establish exactly the rights and duties of each have often been urgently called for. Peaceful trade may be grateful for the precision with which a subject of the highest importance to its interests is now for the first time treated.

The notion of contraband of war connotes two elements: it concerns objects of a certain kind and with a certain destination. Cannons, for instance, are carried in a neutral vessel. Are they contraband? That depends: if they are destined for a neutral Government,—no; if they are destined for an enemy Government,—yes. The trade in certain articles is by no means generally forbidden during war; it is the trade with the enemy in these articles which is illicit, and against which the belligerent to whose detriment it is carried on may protect himself by the measures allowed by international law.

Articles 22 and 24 enumerate the articles which may be contraband of war, and which are so in fact when they have a certain destination laid down in Articles 30 and 33. The traditional distinction between *absolute* and *conditional* contraband is maintained: Articles 22 and 30 refer to the former, and Articles 24 and 33 to the latter.

Article 22. (See pp. 259, 260)

This list is that drawn up at the second Peace Conference by the committee charged with the special study of the question of contraband. It was the result of mutual concessions, and it has not seemed wise to reopen discussion on this subject for the purpose either of cutting out or of adding articles.

The words *de plein droit* (without notice) imply that the provision becomes operative by the mere fact of the war, and that no declaration by the belligerents is necessary. Trade is already warned in time of peace.

Article 23. (See p. 260)

Certain discoveries or inventions might make the list in Article 22 insufficient. An addition may be made to it on condition that it concerns articles *exclusively used for war*. This addition must be notified to the other Powers, which will take the necessary measures to inform their subjects of it. In theory the notification may be made in time of peace or of war. The former case will doubtless rarely occur, because a State which made such a notification might be suspected of meditating a war ; it would, nevertheless, have the advantage of informing trade beforehand. There was no reason for making it impossible.

The right given to a Power to make an addition to the list by a mere declaration has been thought too wide. It should be noticed that this right does not involve the dangers supposed. In the first place, it is understood that the declaration is only operative for the Power which makes it, in the sense that the article added will only be contraband for it, as a belligerent ; other States may, of course, also make a similar declaration. The addition may only refer to articles *exclusively used for war* ; at present, it would be hard to mention any such articles which are not included in the list. The future is left free. If a Power claimed to add to the list of absolute contraband articles not exclusively used for war, it might expose itself to diplomatic remonstrances, because it would be disregarding an accepted rule. Besides, there would be an eventual resort to the International Prize Court. Suppose that the Court holds that the article mentioned in the declaration of absolute contraband is wrongly placed there, because it is not exclusively used for war, but that it might have been included in a declaration of conditional contraband. Confiscation may then be justified if the capture was made in the conditions laid down for this kind of contraband (Articles 33-35), which differ from those enforced for absolute contraband (Article 30).

It had been suggested that, in the interest of neutral trade, a period should elapse between the notification and its enforcement. But that would be very damaging to the belligerent, whose object is precisely to protect himself, since, during that period, the trade in articles which he thinks dangerous would be free and the effect of his measure a failure. Account has been taken, in another form, of the considerations of equity which have been adduced (see Article 43).

Article 24. (See pp. 260, 261)

On the expression *de plein droit* (without notice) the same remark must be made as with regard to Article 22. The articles enumerated are only conditional contraband if they have the destination specified in Article 33.

Foodstuffs include products necessary or useful for sustaining man, whether solid or liquid.

Paper money only includes inconvertible paper money, *i.e.* banknotes which may or not be legal tender. Bills of exchange and cheques are excluded.

Engines and boilers are included in (6).

Railway material includes fixtures (such as rails, sleepers, turntables, parts of bridges) and rolling stock (such as locomotives, carriages and trucks).

Article 25. (See p. 261)

This provision corresponds, as regards conditional contraband, to that in Article 23 as regards absolute contraband.

Article 26. (See pp. 261, 262)

A belligerent may not wish to use the right to treat as contraband of war all the articles included in the above lists. It may suit him to add to conditional contraband an article included in absolute contraband or to declare free, so far as he is concerned, the trade in some article included in one class or the other. It is desirable that he should make known his intention on this subject, and he will probably do so in order to have the credit of the measure. If he does not do so, but confines himself to giving instructions to his cruisers, the vessels searched will be agreeably surprised if the searcher does not reproach them with carrying what they themselves consider contraband. Nothing can prevent a Power from making such a declaration in time of peace. See what is said as regards Article 23.

Article 27. (See p. 262)

The existence of a so-called *free* list (Article 28) makes it useful thus to put on record that articles which cannot be used for purposes of war may not be declared contraband of war. It might have been thought that articles not included in that list might at least be declared conditional contraband.

Article 28. (See p. 262)

To lessen the drawbacks of war as regards neutral trade it has been thought useful to draw up this so-called *free list*, but this does not mean, as has been explained above, that all articles outside it might be declared contraband of war.

The *ores* here referred to are the product of mines from which metals are derived.

There was a demand that *dyestuffs* should be included in (10), but this seemed too general, for there are materials from which colours are derived, such as coal, which also have other uses. Products only used for making colours enjoy the exemption.

'Articles de Paris,' an expression the meaning of which is universally understood, come under (15).

(16) refers to the hair of certain animals, such as pigs and wild boars.

Carpets and mats come under household furniture and ornaments (17).

Article 29. (See p. 263)

The articles enumerated in Article 29 are also excluded from treatment as contraband, but for reasons different from those which have led to the inclusion of the list in Article 28.

Motives of humanity have exempted articles exclusively used to aid the sick and wounded, which, of course, include drugs and different medicines. This does not refer to hospital-ships, which enjoy special immunity under the convention of The Hague of October 18, 1907, but to ordinary merchant vessels, whose cargo includes articles of the kind mentioned. The cruiser has, however, the right, in case of urgent necessity, to requisition such articles for the needs of her crew or of the fleet to which she belongs, but they can only be requisitioned on payment of compensation. It must, however, be observed that this right of requisition may not be exercised in all cases. The articles in question must have the destination specified in Article 30, that is to say, an enemy destination. Otherwise, the ordinary law regains its sway; a belligerent could not have the right of requisition as regards neutral vessels on the high seas.

Articles intended for the use of the vessel, which might in themselves and by their nature be contraband of war, may not be so treated—for instance, arms intended for the defence of the vessel against pirates or for making signals. The same is true of articles intended for the use of the crew and passengers during the voyage; the crew here includes all persons in the service of the vessel in general.

Destination of Contraband.—As has been said, the second element in the notion of contraband is *destination*. Great difficulties have arisen on this subject, which find expression in the *theory of continuous voyage*, so often attacked or adduced without a clear comprehension of its exact meaning. Cases must simply be considered on their merits, so as to see how they can be settled without unnecessarily annoying neutrals or sacrificing the legitimate rights of belligerents.

In order to effect a compromise between conflicting theories and practices, absolute and conditional contraband have been differently treated in this connection.

Articles 30 to 32 refer to absolute, and Articles 33 to 36 to conditional, contraband.

Article 30. (See p. 263)

The articles included in the list in Article 22 are absolute contraband when they are destined for territory belonging to or occupied by the enemy, or for his armed military or naval forces. These articles are liable to capture as soon as a final destination of this kind can be shown by the captor to exist. It is not, therefore, the destination of the vessel which is decisive, but that of the goods. It makes no difference if these goods are on board a vessel which is to discharge them in a neutral port ; as soon as the captor is able to show that they are to be forwarded from there by land or sea to an enemy country, it is enough to justify the capture and subsequent condemnation of the cargo. The very principle of continuous voyage, as regards absolute contraband, is established by Article 30. The journey made by the goods is regarded as a whole.

Article 31. (See p. 263)

As has been said, the obligation of proving that the contraband goods really have the destination specified in Article 30 rests with the captor. In certain cases proof of the destination specified in Article 31 is *conclusive*, that is to say, the proof may not be rebutted.

First Case.—The goods are *documented* for discharge in an enemy port, that is to say, according to the ship's papers referring to those goods, they are to be discharged there. In this case there is a real admission of enemy destination on the part of the interested parties themselves.

Second Case.—The vessel is to touch at enemy ports only ; or she is to touch at an enemy port before reaching the neutral port

for which the goods are documented, so that although these goods, according to the papers referring to them, are to be discharged in a neutral port, the vessel carrying them is to touch at an enemy port before reaching that neutral port. They will be liable to capture, and the possibility of proving that their neutral destination is real and in accordance with the intentions of the parties interested is not admitted. The fact that, before reaching that destination, the vessel will touch at an enemy port, would occasion too great a risk for the belligerent whose cruiser searches the vessel. Even without assuming that there is intentional fraud, there might be a strong temptation for the master of the merchant vessel to discharge the contraband, for which he would get a good price, and for the local authorities to requisition the goods.

The same case arises where the vessel, before reaching the neutral port, is to join the armed forces of the enemy.

For the sake of simplicity, the provision only speaks of an *enemy port*, but it is understood that a *port occupied by the enemy* must be regarded as an enemy port, as follows from the general rule in Article 30.

Article 32. (See p. 263)

The papers, therefore, are conclusive proof of the course of the vessel unless she is encountered in circumstances which show that their statements are not to be trusted. See also the explanations given as regards Article 35.

Article 33. (See p. 263)

The rules for conditional contraband differ from those laid down for absolute contraband in two respects: (1) there is no question of destination for the enemy in general, but of destination for the use of his armed forces or government departments; (2) the doctrine of continuous voyage is excluded. Articles 33 and 34 refer to the first, and Article 35 to the second principle.

The articles included in the list of conditional contraband may serve for peaceful uses as well as for hostile purposes. If, from the circumstances, the peaceful purpose is clear, their capture is not justified; it is otherwise if a hostile purpose is to be assumed, as, for instance, in the case of foodstuffs destined for an enemy army or fleet, or of coal destined for an enemy fleet. In such a case there is clearly no room for doubt. But what is the solution when the articles are destined for the civil government departments of the enemy State? It may be money sent to a government department, for use in the payment of its official salaries, or rails sent to a department of public works. In these cases there is

enemy destination, which renders the goods liable in the first place to capture, and in the second to condemnation. The reasons for this are at once legal and practical. The State is one, although it necessarily acts through different departments. If a civil department may freely receive foodstuffs or money, that department is not the only gainer, but the entire State, including its military administration, gains also, since the general resources of the State are thereby increased. Further, the receipts of a civil department may be considered of greater use to the military administration and directly assigned to the latter. Money or foodstuffs really destined for a civil department may thus come to be used directly for the needs of the army. This possibility, which is always present, shows why destination for the departments of the enemy State is assimilated to that for its armed forces.

It is the *departments of the State* which are dependent on the central power that are in question, and not all the departments which may exist in the enemy State; local and municipal bodies, for instance, are not included, and articles destined for their use would not be contraband.

War may be waged in such circumstances that destination for the use of a civil department cannot be suspected, and consequently cannot make goods contraband. For instance, there is a war in Europe and the colonies of the belligerent countries are not, in fact, affected by it. Food-stuffs or other articles in the list of conditional contraband destined for the use of the civil government of a colony would not be held to be contraband of war, because the considerations adduced above do not apply to their case; the resources of the civil government cannot be drawn on for the needs of the war. Gold, silver, or paper money are exceptions, because a sum of money can easily be sent from one end of the world to the other.

Article 34. (See p. 264)

Contraband articles will not usually be directly addressed to the military authorities or to the government departments of the enemy State. Their true destination will be more or less concealed, and the captor must prove it in order to justify their capture. But it has been thought reasonable to set up presumptions based on the nature of the person to whom, or place for which, the articles are destined. It may be an enemy authority or a trader established in an enemy country who, as a matter of common knowledge, supplies the enemy Government with articles of the kind in question. It may be a fortified place belonging to the enemy or a place

used as a base, whether of operations or of supply, for the armed forces of the enemy.

This general presumption may not be applied to the merchant vessel herself on her way to a fortified place, though she may in herself be conditional contraband, but only if her destination for the use of the armed forces or government departments of the enemy State is directly proved.

In the absence of the above presumptions, the destination is presumed to be innocent. That is the ordinary law, according to which the captor must prove the illicit character of the goods which he claims to capture.

Finally, all the presumptions thus set up in the interest of the captor or against him may be rebutted. The national tribunals, in the first place, and, in the second, the International Court, will exercise their judgment.

Article 35. (See p. 264)

As has been said above, the doctrine of continuous voyage is excluded for conditional contraband, which is only liable to capture when it is to be discharged in an enemy port. As soon as the goods are documented for discharge in a neutral port they can no longer be contraband, and no examination will be made as to whether they are to be forwarded to the enemy by sea or land from that neutral port. It is here that the case of absolute contraband is essentially different.

The ship's papers furnish complete proof as to the voyage on which the vessel is engaged and as to the place where the cargo is to be discharged; but this would not be so if the vessel were encountered clearly out of the course which she should follow according to her papers, and unable to give adequate reasons to justify such deviation.

This rule as to the proof furnished by the ship's papers is intended to prevent claims frivolously raised by a cruiser and giving rise to unjustifiable captures. It must not be too literally interpreted, for that would make all frauds easy. Thus it does not hold good when the vessel is encountered at sea clearly out of the course which she ought to have followed, and unable to justify such deviation. The ship's papers are then in contradiction with the true facts and lose all value as evidence; the cruiser will be free to decide according to the merits of the case. In the same way, a search of the vessel may reveal facts which irrefutably prove that her destination or the place where the goods are to be discharged is incorrectly entered in the ship's papers. The com-

mander of the cruiser is then free to judge of the circumstances and capture the vessel or not according to his judgment. To resume, the ship's papers are proof, unless facts show their evidence to be false. This qualification of the value of the ship's papers as proof seems self-evident and unworthy of special mention. The aim has been not to appear to weaken the force of the general rule, which forms a safeguard for neutral trade.

It does not follow that, because a single entry in the ship's papers is shown to be false, their evidence loses its value as a whole. The entries which cannot be proved false retain their value.

Article 36. (See p. 265)

The case contemplated is certainly rare, but has nevertheless arisen in recent wars. In the case of absolute contraband, there is no difficulty, since destination for the enemy may always be proved, whatever the route by which the goods are sent (Article 30). For conditional contraband the case is different, and an exception must be made to the general rule laid down in Article 35, paragraph 1, so as to allow the captor to prove that the suspected goods really have the special destination referred to in Article 33, without the possibility of being confronted by the objection that they were to be discharged in a neutral port.

Article 37. (See p. 265)

The vessel may be captured for contraband during the whole of her voyage, provided that she is in waters where an act of war is lawful. The fact that she intends to touch at a port of call before reaching the enemy destination does not prevent capture, provided that destination in her particular case is proved in conformity with the rules laid down in Articles 30 to 32 for absolute, and in Articles 33 to 35 for conditional contraband, subject to the exception provided for in Article 36.

Article 38. (See p. 265)

A vessel is liable to capture for carrying contraband, but not for having done so.

Article 39. (See p. 265)

This presents no difficulty.

Article 40. (See p. 265)

It was universally admitted that in certain cases the condemnation of the contraband is not enough, and that the vessel herself should also be condemned, but opinions differed as to what

these cases were. It was decided that the contraband must bear a certain proportion to the total cargo. But the question divides itself into two parts: (1) What shall be the proportion? The solution adopted is the mean between those proposed, which varied from a quarter to three quarters. (2) How shall this proportion be reckoned? Must the contraband form more than half the cargo in volume, weight, value, or freight? The adoption of a single fixed standard gives rise to theoretical objections, and also to practices intended to avoid condemnation of the vessel in spite of the importance of the cargo. If the standard of volume or weight is adopted, the master will ship innocent goods occupying space, or of weight, sufficient to exceed the contraband. A similar remark may be made as regards the standard of value or freight. The consequence is that, in order to justify condemnation, it is enough that the contraband should form more than half the cargo by any one of the above standards. This may seem harsh; but, on the one hand, any other system would make fraudulent calculations easy, and, on the other, the condemnation of the vessel may be said to be justified when the carriage of contraband formed an important part of her venture—a statement which applies to all the cases specified.

Article 41. (See p. 265)

It is not just that, on the one hand, the carriage of more than a certain proportion of contraband should involve the condemnation of the vessel, while if the contraband forms less than this proportion, it alone is confiscated. This often involves no loss for the master, the freight of this contraband having been paid in advance. Does this not encourage trade in contraband, and ought not a certain penalty to be imposed for the carriage of a proportion of contraband less than that required to entail condemnation? A kind of fine was proposed which should bear a relation to the value of the contraband articles. Objections of various sorts were brought forward against this proposal, although the principle of the infliction of some kind of pecuniary loss for the carriage of contraband seemed justified. The same object was attained in another way by providing that the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and of the custody of the vessel and of her cargo during the proceedings are to be paid by the vessel. The expenses of the custody of the vessel include in this case the keep of the captured vessel's crew. It should be added that the loss to a vessel by being taken to a prize port and kept there is the most serious deterrent as regards the carriage of contraband.

Article 42. (See p. 265)

The owner of the contraband is punished in the first place by the condemnation of his contraband property ; and in the second by that of the goods, even if innocent, which he may possess on board the same vessel.

Article 43. (See p. 266)

This provision is intended to spare neutrals who might in fact be carrying contraband, but against whom no charge could be made. This may arise in two cases. The first is that in which they are unaware of the outbreak of hostilities ; the second is that in which, though aware of this, they do not know of the declaration of contraband made by a belligerent, in accordance with Articles 23 and 25, which is, as it happens, the one applicable to the whole or a part of the cargo. It would be unjust to capture the ship and condemn the contraband ; on the other hand, the cruiser cannot be obliged to let go on to the enemy goods suitable for use in the war of which he may stand in urgent need. These opposing interests are reconciled by making condemnation conditional on the payment of compensation (see the convention of October 18, 1907, on the rules for enemy merchant vessels on the outbreak of hostilities (p. 153), which expresses a similar idea).

Article 44. (See p. 266)

A neutral vessel is stopped for carrying contraband. She is not liable to condemnation, because the contraband does not reach the proportion specified in Article 40. She can nevertheless be taken to a prize port for judgment to be passed on the contraband. This right of the captor appears too wide in certain cases, if the importance of the contraband, possibly slight (for instance, a case of guns or revolvers), is compared with the heavy loss incurred by the vessel by being thus turned out of her course and detained during the time taken up by the proceedings. The question has, therefore, been asked whether the right of the neutral vessel to continue her voyage might not be admitted if the contraband articles were handed over to the captor, who, on his part, might only refuse to receive them for sufficient reasons, for instance, the rough state of the sea, which would make transshipment difficult or impossible, well-founded suspicions as to the amount of contraband which the merchant vessel is really carrying, the difficulty of stowing the articles on board the warship, &c. This proposal did not gain sufficient support. It was alleged to be impossible to impose such an obligation on the cruiser, for which this handing

over of goods would almost always have drawbacks. If, by chance, it has none, the cruiser will not refuse it, because she herself will gain by not being turned out of her course by having to take the vessel to a port. The idea of an obligation having thus been excluded, it was decided to provide for the voluntary handing over of the contraband, which, it is hoped, will be carried out whenever possible, to the great advantage of both parties. The formalities provided for are very simple and need no explanation.

There must be a judgment of a prize court as regards the goods thus handed over. For this purpose the captor must be furnished with the necessary papers. It may be supposed that there might be doubt as to the character of certain articles which the cruiser claims as contraband; the master of the merchant vessel contests this claim, but prefers to deliver them up, so as to be at liberty to continue his voyage. This is merely a capture which has to be confirmed by the prize court.

The contraband delivered up by the merchant vessel may hamper the cruiser, which must be left free to destroy it at the moment of handing over or later.

CHAPTER III

UNNEUTRAL SERVICE

In a general way, it may be said that the merchant-vessel which violates neutrality, whether by carrying contraband of war or by breaking blockade, affords aid to the enemy, and it is on this ground that the belligerent whom she injures by her acts is justified in inflicting on her certain losses. But there are cases where such unneutral service bears a particularly distinctive character, and for such cases it has been thought necessary to make special provision. They have been divided into two classes according to the gravity of the act of which the neutral vessel is accused.

In the cases included in the first class (Article 45), the vessel is condemned, and receives the treatment of a vessel subject to condemnation for carrying contraband. This means that the vessel does not lose her neutral character and has a full claim to the rights enjoyed by neutral vessels; for instance, she may not be destroyed by the captor except under the conditions laid down for neutral

vessels (Articles 48 *et seqq.*) ; the rule that *the flag covers the goods* applies to goods she carries on board.

In the more serious cases which belong to the second class (Article 46), the vessel is, again, condemned ; but further, she is treated not only as a vessel subject to condemnation for carrying contraband, but as an enemy merchant vessel, which treatment entails certain consequences. The rule governing the destruction of neutral prizes does not apply to the vessel, and, as she has become an enemy vessel, it is no longer the second but the third rule of the Declaration of Paris which is applicable. The goods on board will be presumed to be enemy goods ; neutrals will have the right to claim their property on establishing their neutrality (Article 59). It would, however, be going too far to say that the original neutral character of the vessel is completely lost, so that she should be treated as though she had always been an enemy vessel. The vessel may plead that the allegation made against her has no foundation in fact, that the act of which she is accused has not the character of unneutral service. She has, therefore, the right of appeal to the International Court in virtue of the provisions which protect neutral property.

Article 45. (See p. 266)

The first case supposes passengers travelling *as individuals* ; the case of a *military detachment* is dealt with hereafter. The case is that of individuals *embodied* in the armed military or naval forces of the enemy. There was some doubt as to the meaning of this word. Does it include those individuals only who are summoned to serve in virtue of the law of their country and who have really joined the corps to which they are to belong ? Or does it also include such individuals from the moment when they are summoned, and before they join that corps ? The question is of great practical importance. Supposing the case is one of individuals who are natives of a Continental European country and are settled in America : these individuals have military obligations towards their country of origin ; they have, for instance, to belong to the reserve of the active army of that country. Their country is at war and they sail to perform their service. Shall they be considered as *embodied* in the sense of the provision which we are discussing ? If we judged by the municipal law of certain countries, we might argue that they should be so considered. But, apart from reasons of pure law, the contrary opinion has seemed more in accordance with practical necessity and has been accepted by all in a spirit of conciliation. It would be difficult, perhaps even impossible, without having recourse to vexatious measures to which

neutral Governments would not willingly submit, to pick out among the passengers in a vessel those who are bound to perform military service and are on their way to do so.

The transmission of intelligence in the interest of the enemy is to be treated in the same way as the carriage of passengers embodied in his armed force. The reference to a vessel *especially* undertaking a voyage is intended to show that her usual service is not meant. She has been turned from her course ; she has touched at a port which she does not ordinarily visit in order to embark the passengers in question. She need not be *exclusively* devoted to the service of the enemy ; that case would come into the second class (Article 56 (4)).

In the two cases just mentioned the vessel has performed but a single service ; she has been employed to carry certain people, or to transmit certain intelligence ; she is not continuously in the service of the enemy. In consequence she may be captured during the voyage on which she is performing the service which she has to render. Once that voyage is finished, all is over, in the sense that she may not be captured for having rendered the service in question. The principle is the same as that recognised in the case of contraband (Article 38).

The second case also falls under two heads.

There is, first, the carriage of a military detachment of the enemy, or that of one or more persons who during the voyage directly assist his operations, for instance, by signalling. If these people are soldiers or sailors in uniform there is no difficulty, the vessel is clearly liable to condemnation. If they are soldiers or sailors in mufti who might be mistaken for ordinary passengers, knowledge on the part of the master or owner is required, the charterer being assimilated to the latter. The rule is the same in the case of persons directly assisting the enemy during the voyage.

In these cases, if the vessel is condemned for unneutral service, the goods belonging to her owner are also liable to condemnation.

These provisions assume that the state of war was known to the vessel engaged in the operations specified ; such knowledge is the reason and justification of her condemnation. The position is altogether different when the vessel is unaware of the outbreak of hostilities, so that she undertakes the service in ordinary circumstances. She may have learnt of the outbreak of hostilities while at sea, but have had no chance of landing the persons whom she was carrying. Condemnation would then be unjust, and the equitable rule adopted is in accordance with the provisions already accepted in other matters. If a vessel has left an enemy port

subsequently to the outbreak of hostilities, or a neutral port after that outbreak has been notified to the Power to whom such port belongs, her knowledge of the existence of a state of war will be presumed.

The question here is merely one of preventing the condemnation of the vessel. The persons found on board her who belong to the armed forces of the enemy may be made prisoners of war by the cruiser.

Article 46. (See p. 267)

The cases here contemplated are more serious than those in Article 45, which justifies the severer treatment inflicted on the vessel, as explained above.

First Case.—The vessel takes a direct part in the hostilities. This may take different forms. It is needless to say that, in an armed conflict, the vessel takes all the risks incidental thereto. We suppose her to have fallen into the power of the enemy whom she was fighting, and who is entitled to treat her as an enemy merchant vessel.

Second Case.—The vessel is under the orders or control of an agent placed on board by the enemy Government. His presence marks the relation in which she stands to the enemy. In other circumstances the vessel may also have relations with the enemy, but to be subject to condemnation she must come under the third head.

Third Case.—The whole vessel is chartered by the enemy Government, and is therefore entirely at its disposal; it can use her for different purposes more or less directly connected with the war, notably as a transport; such is the position of colliers which accompany a belligerent fleet. There will often be a charter-party between the belligerent Government and the owner or master of the vessel, but all that is required is proof, and the fact that the whole vessel has in fact been chartered is enough in whatever way it may be established.

Fourth Case.—The vessel is at the time exclusively devoted to the carriage of enemy troops or to the transmission of intelligence in the enemy's interest. The case is different from those dealt with by Article 45, and the question is one of a service to which the ship is permanently devoted. The decision accordingly is that, so long as such service lasts, the vessel is liable to capture, even if, at the moment when an enemy cruiser searches her, she is engaged neither in the transport of troops nor in the transmission of intelligence.

As in the cases in Article 45, and for the same reasons, goods found on board belonging to the owner of the vessel are also liable to condemnation.

It was proposed to treat as an enemy merchant vessel a neutral vessel making, at the time, and with the sanction of the enemy Government, a voyage which she has only been permitted to make subsequently to the outbreak of hostilities or during the two preceding months. This rule would be enforced notably on neutral merchant vessels admitted by a belligerent to a service reserved in time of peace to the national marine of that belligerent—for instance, to the coasting trade. Several Delegations formally rejected this proposal, so that the question thus raised remains an open one.

Article 47. (See p. 268)

Individuals embodied in the armed military or naval forces of a belligerent may be on board a neutral merchant vessel when she is searched. If the vessel is subject to condemnation, the cruiser will capture her and take her to one of her own ports with the persons on board. Clearly the soldiers or sailors of the enemy State will not be set free, but will be treated as prisoners of war. Perhaps the case will not be one for the capture of the ship—for instance, because the master was unaware of the status of an individual who had come on board as an ordinary passenger. Must the soldier or soldiers on board the vessel be set free? That does not appear admissible. The belligerent cruiser cannot be compelled to set free active enemies who are physically in her power and are more dangerous than this or that contraband article. She must naturally proceed with great discretion, and must act on her own responsibility in requiring the surrender of these individuals, but the right to do so is hers; it has therefore been thought necessary to explain the point.

CHAPTER IV

DESTRUCTION OF NEUTRAL PRIZES

The destruction of neutral prizes was a subject comprised in the programme of the second Peace Conference, and on that occasion no settlement was reached. It reappeared in the programme of the present Conference, and this time agreement has been found possible. Such a result, which bears witness to the sincere desire

of all parties to arrive at an understanding, is a matter for congratulation. It has been shown once more that conflicting hard and fast rules do not always correspond to things as they are, and that if there be readiness to descend to particulars, and to arrive at the precise way in which the rules have been applied, it will often be found that the actual practice is very much the same, although the doctrines professed appear to be entirely in conflict. To enable two parties to agree, it is first of all necessary that they should understand each other, and this frequently is not the case. Thus it has been found that those who declared for the right to destroy neutral prizes never claimed to use this right wantonly or at every opportunity, but only by way of exception; while, on the other hand, those who maintained the principle that destruction is forbidden, admitted that the principle must give way in certain exceptional cases. It therefore became a question of reaching an understanding with regard to those exceptional cases to which, according to both views, the right to destroy should be confined. But this was not all: there was need for some guarantee against abuse in the exercise of this right; the possibility of arbitrary action in determining these exceptional cases must be limited by throwing some real responsibility upon the captor. It was at this stage that a new idea was introduced into the discussion, thanks to which it was possible to arrive at an agreement. The possibility of intervention by a court of justice will make the captor reflect before he acts, and at the same time secure reparation in cases where there was no reason for the destruction.

Such is the general spirit of the provisions of this chapter.

Article 48. (See p. 268)

The general principle is very simple. A neutral vessel which has been seized may not be destroyed by the captor; so much may be admitted by everyone, whatever view is taken as to the effect produced by the capture. The vessel must be taken into a port, for the determination there as to the validity of the prize. A prize crew will be put on board or not, according to circumstances.

Article 49. (See p. 268)

The first condition necessary to justify the destruction of the captured vessel is that she should be liable to condemnation upon the facts of the case. If the captor cannot even hope to obtain the condemnation of the vessel, how can he lay claim to the right to destroy her?

The second condition is that the observance of the general principle would involve danger to the safety of the warship or to

the success of the operations in which she is engaged at the time. This is what was finally agreed upon after various solutions had been tried. It was understood that the phrase *compromettre la sécurité* was synonymous with *mettre en danger le navire*, and might be translated into English by: *involve danger*. It is, of course, the situation at the moment when the destruction takes place which must be considered in order to decide whether the conditions are or are not fulfilled. For a danger which did not exist at the actual moment of the capture may have appeared some time afterwards.

Article 50. (See p. 268)

This provision lays down the precautions to be taken in the interests of the persons on board and of the administration of justice.

Article 51. (See p. 268)

This claim gives a guarantee against the arbitrary destruction of prizes by throwing a real responsibility upon the captor who has carried out the destruction. The result is that before any decision is given respecting the validity of the prize, the captor must prove that the situation he was in was really one which fell under the head of the exceptional cases contemplated. This must be proved in proceedings to which the neutral is a party, and if the latter is not satisfied with the decision of the national prize court he may take his case to the International Court. Proof to the above effect is, therefore, a condition precedent which the captor must fulfil. If he fails to do this, he must compensate the parties interested in the vessel and the cargo, and the question whether the capture was valid or not will not be gone into. In this way a real sanction is provided in respect of the obligation not to destroy a prize except in particular cases, the sanction taking the form of a fine inflicted on the captor. If, on the other hand, this proof is given, the prize procedure follows the usual course; if the prize is declared valid, no compensation is due; if it is declared void, the parties interested have a right to be compensated. Resort to the International Court can only be made after the decision of the prize court has been given on the whole matter, and not immediately after the preliminary question has been decided.

Article 52. (See p. 268)

Supposing a vessel which has been destroyed carried neutral goods not liable to condemnation: the owner of such goods has, in every case, a right to compensation, that is, without there being

occasion to distinguish between cases where the destruction was or was not justified. This is equitable and a further guarantee against arbitrary destruction.

Article 54. (See p. 269)

A cruiser encounters a neutral merchant vessel carrying contraband in a proportion less than that specified in Article 40. The captain may put a prize crew on board the vessel and take her into a port for adjudication. He may, in conformity with the provisions of Article 44, agree to the handing over of the contraband if offered by the vessel stopped. But what is to happen if neither of these solutions is reached? The vessel stopped does not offer to hand over the contraband, and the cruiser is not in a position to take the vessel into a national port. Is the cruiser obliged to let the neutral vessel go with the contraband on board? To require this seemed going too far, at least in certain exceptional circumstances. These circumstances are in fact the same as would have justified the destruction of the vessel, had she been liable to condemnation. In such a case, the cruiser may demand the handing over, or proceed to the destruction of the goods liable to condemnation. The reasons for which the right to destroy the vessel has been recognised may justify the destruction of the contraband goods, the more so as the considerations of humanity which can be adduced against the destruction of a vessel do not in this case apply. Against arbitrary demands by the cruiser there are the same guarantees as those which made it possible to recognise the right to destroy the vessel. The captor must, as a preliminary, prove that he was really faced by the exceptional circumstances specified; failing this, he is condemned to pay the value of the goods handed over or destroyed, and the question whether they were contraband or not will not be gone into.

The Article prescribes certain formalities which are necessary to establish the facts of the case and to enable the prize court to adjudicate.

Of course, when once the goods have been handed over or destroyed, and the formalities carried out, the vessel which has been stopped must be left free to continue her voyage.

CHAPTER V

TRANSFER TO A NEUTRAL FLAG

An enemy merchant vessel is liable to capture, whereas a neutral merchant vessel is immune. It can therefore be readily understood that a belligerent cruiser encountering a merchant vessel which lays claim to neutral nationality has to inquire whether such nationality has been acquired legitimately or merely in order to shield the vessel from the risks to which she would have been exposed had she retained her former nationality. This question naturally arises when the transfer has taken place a comparatively short time before the moment at which the ship is searched, whether the actual date be before, or after, the outbreak of hostilities. The answer will be different according as the question is looked at from the point of view of commercial or belligerent interests. Fortunately, rules have been agreed upon which conciliate both these interests as far as possible and which at the same time tell belligerents and neutral commerce what their position is.

Article 55. (See p. 269)

The general rule laid down in the first paragraph is that the transfer of an enemy vessel to a neutral flag is valid, assuming, of course, that the ordinary requirements of the law have been fulfilled. It is upon the captor, if he wishes to have the transfer annulled, that the onus lies of proving that its object was to evade the consequences entailed by the war in prospect. There is one case which is treated as suspicious, that, namely, in which the bill of sale is not on board when the ship has changed her nationality less than sixty days before the outbreak of hostilities. The presumption of validity which has been set up by the first paragraph in favour of the vessel is then replaced by a presumption in favour of the captor. It is presumed that the transfer is void, but the presumption may be rebutted. With a view to such rebuttal, proof may be given that the transfer was not effected in order to evade the consequences of the war ; it is unnecessary to add that the ordinary requirements of the law must have been fulfilled.

It was thought desirable to give to commerce a guarantee that the right of treating a transfer as void on the ground that it was effected in order to evade the consequences of war should not extend too far, and should not cover too long a period. Consequently, if the transfer has been effected more than thirty days

before the outbreak of hostilities, it cannot be impeached on that ground alone, and it is regarded as unquestionably valid if it has been made under conditions which show that it is genuine and final ; these conditions are as follows : the transfer must be unconditional, complete, and in conformity with the laws of the countries concerned, and its effect must be such that both the control of, and the profits earned by, the vessel pass into other hands. When once these conditions are proved to exist, the captor is not allowed to set up the contention that the vendor foresaw the war in which his country was about to be involved, and wished by the sale to shield himself from the risks to which a state of war would have exposed him in respect of the vessels he was transferring. Even in this case, however, when a vessel is encountered by a cruiser and her bill of sale is not on board, she may be captured if a change of nationality has taken place less than sixty days before the outbreak of hostilities ; that circumstance has made her suspect. But if before the prize court the proof required by the second paragraph is adduced, she must be released, though she cannot claim compensation, inasmuch as there was good reason for capturing her.

Article 56. (See p. 270)

The rule respecting *transfers made after the outbreak of hostilities* is more simple. Such a transfer is only valid if it is proved that its object was not to evade the consequences to which an enemy vessel, as such, is exposed. The rule accepted in respect of transfers made before the outbreak of hostilities is inverted. In that case there is a presumption that the transfer is valid ; in the present, that it is void—provided always that proof to the contrary may be given. For instance, it might be proved that the transfer had taken place by inheritance.

Article 56 recites cases in which the presumption that the transfer is void is absolute, for reasons which can be readily understood : in the first case, the connection between the transfer and the war risk run by the vessel is evident ; in the second, the transferee is a mere man of straw, who is to be treated as owner during a dangerous period, after which the vendor will recover possession of his vessel ; lastly, the third case might strictly be regarded as already provided for, since a vessel which lays claim to neutral nationality must naturally prove that she has a right to it.

At one time provision was made in this Article for the case of a vessel which was retained, after the transfer, in the trade in which she had previously been engaged. Such a circumstance is in the highest degree suspicious ; the transfer has a fictitious appearance,

inasmuch as nothing has changed in regard to the vessel's trade. This would apply, for instance, if a vessel were running on the same line before and after the transfer. It was, however, objected that to set up an absolute presumption would sometimes be too severe, and that certain kinds of vessels, as, for example, tank-ships, could, on account of their build, engage only in a certain definite trade. To meet this objection, the word '*route*' was then added, so that it would have been necessary that the vessel should be engaged *in the same trade and on the same route*; it was thought that in this way the above contention would have been satisfactorily met. However, the suppression of this case from the list being insisted on, it was agreed to eliminate it. Consequently a transfer of this character now falls within the general rule; it is certainly presumed to be void, but the presumption may be rebutted.

CHAPTER VI

ENEMY CHARACTER

The rule in the Declaration of Paris, that 'the neutral flag covers enemy goods, with the exception of contraband of war,' corresponds so closely with the advance of civilisation, and has taken so firm a hold on the public mind, that it is impossible, in the face of so extensive an application, to avoid seeing in that rule the embodiment of a principle of the common law of nations which can no longer be disputed. The determination of the neutral or enemy character of merchant vessels accordingly decides not only the question of the validity of their capture, but also the fate of the non-contraband goods on board. A similar general observation may be made with reference to the neutral or enemy character of goods. No one thinks of contesting to-day the principle according to which 'neutral goods, with the exception of contraband of war, are not liable to capture on board an enemy ship.' It is, therefore, only in respect of goods found on board an enemy ship that the question whether they are neutral or enemy property arises.

The determination of what constitutes neutral or enemy character thus appears as a development of the two principles laid down in 1856, or rather as a means of securing their just application in practice.

The advantage of deducing from the practices of different countries some clear and simple rules on this subject may be said

to need no demonstration. The uncertainty as to the risk of capture, if it does not put an end to trade, is at least the most serious of hindrances to its continuance. A trader ought to know the risks which he runs in putting his goods on board this or that ship, while the underwriter, if he does not know the extent of those risks, is obliged to charge war premiums, which are often either excessive or else inadequate.

The rules which form this chapter are, unfortunately, incomplete; certain important points had to be laid aside, as has been already observed in the introductory explanations, and as will be further explained below.

Article 57. (See p. 270)

The principle, therefore, is that *the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly*. It is a simple rule which appears satisfactorily to meet the special case of ships, as distinguished from that of other movable property, and notably of the cargo. From more than one point of view, ships may be said to possess an individuality; notably they have a nationality, a national *character*. This attribute of nationality finds visible expression in the right to fly a flag; it has the effect of placing ships under the protection and control of the State to which they belong; it makes them amenable to the sovereignty and to the laws of that State, and liable to requisition, should the occasion arise. Here is the surest test of whether a vessel is really a unit in the merchant marine of a country, and here therefore the best test by which to decide whether her character is neutral or enemy. It is, moreover, preferable to rely exclusively upon this test, and to discard all considerations connected with the personal status of the owner.

The text makes use of the words 'the flag which the vessel is entitled to fly'; that expression means, of course, the flag under which, whether she is actually flying it or not, the vessel is entitled to sail according to the municipal laws which govern that right.

Article 57 safeguards the provisions respecting transfer to another flag, as to which it is sufficient to refer to Articles 55 and 56; a vessel may very well have the right to fly a neutral flag, as far as the law of the country to which she claims to belong is concerned, but may be treated as an enemy vessel by a belligerent, because the transfer in virtue of which she has hoisted the neutral flag is annulled by Article 55 or Article 56.

Lastly, the question was raised whether a vessel loses her neutral character when she is engaged in a trade which the enemy, prior to the war, reserved exclusively for his national vessels; but, as has

been observed above in connection with the subject of *Unneutral Service*, no agreement was reached, and the question remains an open one, as the second paragraph of Article 57 is careful to explain.

Article 58. (See p. 270)

Unlike ships, goods have no individuality of their own ; their neutral or enemy character is made to depend upon the personal status of their owner. This opinion prevailed after an exhaustive study of different views, which inclined towards reliance on the country of origin of the goods, the status of the person at whose risk they are, of the consignee, or of the consignor. The test adopted in Article 58 appears, moreover, to be in conformity with the terms of the Declaration of Paris, as also with those of the convention of The Hague of the 18th October, 1907, relative to the establishment of an International Prize Court, where the expression *neutral or enemy property* is used (Articles 1, 3, 4, 8).

But it cannot be concealed that Article 58 solves no more than a part of the problem, and that the easier part ; it is the neutral or enemy character of the owner which determines the character of the goods, but what is to determine the neutral or enemy character of the owner ? On this point nothing is said, because it was found impossible to arrive at an agreement. Opinions were divided between *domicile* and *nationality* ; no useful purpose will be served by reproducing here the arguments adduced to support the two positions. It was hoped that a compromise might have been reached on the basis of a clause to the following effect :—

‘ The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy nationality of their owner, or, if he is of no nationality or of double nationality (*i.e.* both neutral and enemy), by his domicile in a neutral or enemy country ;

‘ Provided that goods belonging to a limited liability or joint stock company are considered as neutral or enemy according as the company has its headquarters in a neutral or enemy country.’

But there was no unanimity.

Article 59. (See p. 270)

Article 59 gives expression to the traditional rule according to which goods found on board an enemy vessel are, failing proof to the contrary, presumed to be enemy goods ; this is merely a simple presumption, which leaves to the claimant the right, but at the same time the onus, of proving his title.

Article 60. (See p. 271)

This provision contemplates the case where goods which were enemy property at the time of dispatch have been the subject of a sale or transfer during the course of the voyage. The ease with which enemy goods might secure protection from the exercise of the right of capture by means of a sale which is made subject to a reconveyance of the property on arrival has always led to a refusal to recognise such transfers. The enemy character subsists.

With regard to the moment from which goods must be considered to acquire and retain the enemy character of their owner, the text has been inspired by the same spirit of equity as governed the convention of The Hague, relative to the status of merchant vessels on the outbreak of hostilities, and by the same desire to protect mercantile operations undertaken in the security of a time of peace. It is only when the transfer takes place after the outbreak of hostilities that it is, so far as the loss of enemy character is concerned, inoperative until the arrival of the goods in question. The date which is taken into consideration here is that of the transfer, and not of the departure of the vessel. For, while the vessel which started before the war began, and remains, perhaps, unaware of the outbreak of hostilities, may enjoy on this account some degree of exemption, the goods may nevertheless possess enemy character; the enemy owner of these goods is in a position to be aware of the state of war, and it is for that very reason that he is likely to seek to evade its consequences.

It was, however, thought right to add what is, if not a limitation, at least a complement agreed to be necessary. In a great number of countries an unpaid vendor has, in the event of the bankruptcy of the buyer, a recognised legal right to recover the goods which have already become the property of the buyer but not yet reached him (*stoppage in transitu*). In such a case the sale is cancelled, and, in consequence of the recovery, the vendor obtains the goods again and is not deemed ever to have ceased to be the owner. This right gives to neutral commerce, in the case of a genuine bankruptcy, a protection too valuable to be sacrificed, and the second paragraph of Article 60 is intended to preserve it.

CHAPTER VII

CONVOY

The practice of convoy has, in the past, occasionally given rise to grave difficulties and even to conflict. It is, therefore, satisfactory to be able to record the agreement which has been reached upon this subject.

Article 61. (See p. 271)

The principle laid down is simple : a neutral vessel under the convoy of a warship of her own nationality is exempt from search. The reason for this rule is that the belligerent cruiser ought to be able to find in the assurances of the commander of the convoy as good a guarantee as would be afforded by the exercise of the right of search itself ; in fact, she cannot call in question the assurances given by the official representative of a neutral Government, without displaying a lack of international courtesy. If neutral Governments allow belligerents to search vessels sailing under their flag, it is because they do not wish to be responsible for the supervision of such vessels, and therefore allow belligerents to protect themselves. The situation is altered when a neutral Government consents to undertake that responsibility ; the right of search has no longer the same importance.

But it follows from the explanation of the rule respecting convoy that the neutral Government undertakes to afford the belligerents every guarantee that the vessels convoyed shall not take advantage of the protection accorded to them in order to do anything inconsistent with their neutrality, as, for example, to carry contraband, render unneutral service to the belligerent, or attempt to break blockade. There is need, therefore, that a genuine supervision should be exercised from the outset over the vessels which are to be convoyed ; and that supervision must be continued throughout the voyage. The Government must act with vigilance, so as to prevent all abuse of the right of convoy, and must give to the officer who is put in command of a convoy precise instructions to this effect.

A belligerent cruiser encounters a convoy ; she communicates with the commander of the convoy, who must, at her request, give in writing all relevant information about the vessels under his protection. A written declaration is required, because it prevents all ambiguities and misunderstandings, and because it pledges to a greater extent the responsibility of the commander. The

object of such a declaration is to make search unnecessary by the mere fact of giving to the cruiser the information which the search itself would have supplied.

Article 62. (See p. 271)

In the majority of cases the cruiser will be satisfied with the declaration which the commander of the convoy will have given to her, but she may have serious grounds for believing that the confidence of the commander has been abused, as, for example, that a ship under convoy of which the papers are apparently in order and exhibit nothing suspicious is, in fact, carrying contraband cleverly concealed. The cruiser may, in such a case, communicate her suspicions to the commander of the convoy, and an investigation may be considered necessary. If so, it will be made by the commander of the convoy, since it is he alone who exercises authority over the vessels placed under his protection. It appeared, nevertheless, that much difficulty might often be avoided if the belligerent were allowed to be present at this investigation; otherwise he might still suspect, if not the good faith, at least the vigilance and perspicacity of the person who conducted the search. But it was not thought that an obligation to allow the officer of the cruiser to be present at the investigation should be imposed upon the commander of the convoy; He must act as he thinks best; if he agrees to the presence of an officer of the cruiser, it will be as an act of courtesy or good policy. He must in every case draw up a report of the investigation and give a copy to the officer of the cruiser.

Differences of opinion may occur between the two officers, particularly in relation to conditional contraband. The character of a port to which a cargo of corn is destined may be disputed. Is it an ordinary commercial port? or is it a port which serves as a base of supply for the armed forces? The situation which arises out of the mere fact of the convoy must in such a case be respected. The officer of the cruiser can do no more than make his protest, and the difficulty must be settled through the diplomatic channel.

The situation is altogether different if a vessel under convoy is found beyond the possibility of dispute to be carrying contraband. The vessel has no longer a right to protection, since the condition upon which such protection was granted has not been fulfilled. Besides deceiving her own Government, she has tried to deceive the belligerent. She must therefore be treated as a neutral merchant vessel encountered in the ordinary way and searched by a belligerent cruiser. She cannot complain at being exposed to such rigorous treatment, since there is in her case an aggravation of the offence committed by a carrier of contraband.

CHAPTER VIII

RESISTANCE TO SEARCH

The subject treated in this chapter was not mentioned in the programme submitted by the British Government in February 1908, but it is intimately connected with several of the questions in that programme, and thus attracted the attention of the Conference in the course of its deliberations; and it was thought necessary to frame a rule upon it, the drafting of which presented little difficulty.

A belligerent cruiser encounters a merchant vessel and summons her to stop, in order that she may be searched. The vessel summoned does not stop, but tries to avoid the search by flight. The cruiser may employ force to stop her, and the merchant vessel, if she is damaged or sunk, has no right to complain, seeing that she has failed to comply with an obligation imposed upon her by the law of nations.

If the vessel is stopped, and it is shown that it was only in order to escape the inconvenience of being searched that recourse was had to flight, and that beyond this she had done nothing contrary to neutrality, she will not be punished for her attempt at flight. If, on the other hand, it is established that the vessel has contraband on board, or that she has in some way or other failed to comply with her duty as a neutral, she will suffer the consequences of her infraction of neutrality; but in this case, as in the last, she will not undergo any punishment for her attempt at flight. Expression was given to the contrary view; namely, that a ship should be punished for an obvious attempt at flight as much as for forcible resistance. It was suggested that the prospect of having the escaping vessel condemned as good prize would influence the captain of the cruiser to do his best to spare her. But in the end this view did not prevail.

Article 63. (See p. 271)

The situation is different if forcible resistance is made to any legitimate action by the cruiser. The vessel commits an act of hostility and must, from that moment, be treated as an enemy vessel; she will therefore be subject to condemnation, although the search may not have shown that anything contrary to neutrality had been done. So far no difficulty seems to arise.

What must be decided with regard to the cargo? The rule which appeared to be the best is that according to which the cargo will be treated like the cargo on board an enemy vessel. This assimilation involves the following consequences: a neutral vessel which has offered resistance becomes an enemy vessel and the goods on board are presumed to be enemy goods. Neutrals who are interested may claim their property, in accordance with Article 3 of the Declaration of Paris, but enemy goods will be condemned, since the rule that *the flag covers the goods* cannot be adduced, because the captured vessel on board which they are found is considered to be an enemy vessel. It will be noticed that the right to claim the goods is open to all neutrals, even to those whose nationality is that of the captured vessel; it would seem to be an excess of severity to make such persons suffer for the action of the master. There is, however, an exception as regards the goods which belong to the owner of the vessel; it seems natural that he should bear the consequences of the acts of his agent. His property on board the vessel is therefore treated as enemy goods. *A fortiori* the same rule applies to the goods belonging to the master.

CHAPTER IX

COMPENSATION

This chapter is of very general application, inasmuch as the provisions which it contains are operative in all the numerous cases in which a cruiser may capture a vessel or goods.

Article 64. (See p. 272)

A cruiser has captured a neutral vessel, on the ground, for example, of carriage of contraband or breach of blockade. The prize court releases the vessel, declaring the capture to be void. This decision alone is evidently not enough to indemnify the parties interested for the loss incurred in consequence of the capture, and this loss may have been considerable, since the vessel has been during a period, which may often be a very long one, prevented from engaging in her ordinary trade. May these parties claim to be compensated for this injury? Reason requires that the affirmative answer should be given, if the injury has been undeserved; that is to say, if the capture was not brought about by some fault

of the parties. It may, indeed, happen that there was good reason for the capture, because the master of the vessel searched did not produce evidence which ought in the ordinary course to have been available, and which was only furnished at a later stage. In such a case it would be unjust that compensation should be awarded. On the other hand, if the cruiser has really been at fault, if the vessel has been captured when there were not good reasons for doing so, it is just that compensation should be granted.

It may also happen that a vessel which has been captured and taken into a port is released by the action of the executive without the intervention of a prize court. The existing practice, under such circumstances, is not uniform. In some countries the prize court has no jurisdiction unless there is a question of validating a capture, and cannot adjudicate on a claim for compensation based upon the ground that the capture would have been held unjustifiable; in other countries the prize court would have jurisdiction to entertain a claim of this kind. On this point, therefore, there is a difference which is not altogether equitable, and it is desirable to lay down a rule which will produce the same result in all countries. It is reasonable that every capture effected without good reasons should give to the parties interested a right to compensation, without its being necessary to draw any distinction between the cases in which the capture has or has not been followed by a decision of a prize court; and this argument is all the more forcible when the capture may have so little justification that the vessel is released by the action of the executive. A provision in general terms has therefore been adopted, which is capable of covering all cases of capture.

It should be observed that in the text no reference is made to the question whether the national tribunals are competent to adjudicate on a claim for compensation. In cases where proceedings are taken against the property captured, no doubt upon this point can be entertained. In the course of the proceedings taken to determine the validity of a capture the parties interested have the opportunity of making good their right to compensation, and, if the national tribunal does not give them satisfaction, they can apply to the International Prize Court. If, on the other hand, the action of the belligerent has been confined to the capture, it is the law of the belligerent captor which decides whether there are tribunals competent to entertain a demand for compensation, and, if so, what are those tribunals. The International Court has not, according to the convention of The Hague, any jurisdiction in such a case. From an international point of view, the diplomatic channel is the only one available for making good such a claim, whether the cause

for complaint is founded on a decision actually delivered, or on the absence of any tribunal having jurisdiction to entertain it.

The question was raised as to whether it was necessary to draw a distinction between the direct and the indirect losses suffered by vessel or goods. The best course appeared to be to leave the prize court free to estimate the amount of compensation due, which will vary according to the circumstances and cannot be laid down in advance in rules going into minute details.

For the sake of simplicity, mention has only been made of the vessel, but what has been said applies of course to cargo captured and afterwards released. Innocent goods on board a vessel which has been captured suffer, in the same way, all the inconvenience which attends the capture of the vessel; but if there was good cause for capturing the vessel, whether the capture has subsequently been held to be valid or not, the owners of the cargo have no right to compensation.

It is perhaps useful to indicate certain cases in which the capture of a vessel would be justified, whatever might be the ultimate decision of the prize court. Notably, there is the case where some or all of the ship's papers have been thrown overboard, suppressed, or intentionally destroyed on the initiative of the master or one of the crew or passengers. There is in such a case an element which will justify any suspicion and afford an excuse for capturing the vessel, subject to the master's ability to account for his action before the prize court. Even if the court should accept the explanation given and should not find any reason for condemnation, the parties interested cannot hope to recover compensation.

An analogous case would be that in which there were found on board two sets of papers, or false or forged papers, if this irregularity were connected with circumstances calculated to contribute to the capture of the vessel.

It appeared sufficient that these cases in which there would be a reasonable excuse for the capture should be mentioned in the present Report, and should not be made the object of express provisions, since, otherwise, the mention of these two particular cases might have led to the supposition that they were the only cases in which a capture could be justified.

Such, then, are the principles of international law to which the Naval Conference has sought to give recognition as being fitted to regulate in practice the intercourse of nations on certain important questions in regard to which precise rules have hitherto been wanting. The Conference has thus taken up the work of codification begun by the Declaration of Paris of 1856. It has worked in the same spirit as the second Peace Conference, and, taking advantage

of the labours accomplished at The Hague, it has been able to solve some of the problems which, owing to the lack of time, that Conference was compelled to leave unsolved. Let us hope that it may be possible to say that those who have drawn up the Declaration of London of 1909 are not altogether unworthy of their predecessors of 1856 and 1907.

FINAL PROVISIONS

These provisions have reference to various questions relating to the effect of the Declaration, its ratification, its coming into force, its denunciation, and the accession of unrepresented Powers.

Article 65. (See p. 272)

This Article is of great importance, and is in conformity with that which was adopted in the Declaration of Paris.

The rules contained in the present Declaration relate to matters of great importance and great diversity. They have not all been accepted with the same degree of eagerness by all the Delegations. Concessions have been made on one point in consideration of concessions obtained on another. The whole, all things considered, has been recognised as satisfactory, and a legitimate expectation would be falsified if one Power might make reservations on a rule to which another Power attached particular importance.

Article 66. (See p. 272)

According to the engagement resulting from this Article, the Declaration applies to the relations between the Signatory Powers when the belligerents are likewise parties to the Declaration.

It will be the duty of each Power to take the measures necessary to insure the observance of the Declaration. These measures may vary in different countries, and may or may not involve the intervention of the legislature. The matter is one of national legal requirements.

It should be observed that neutral Powers also may find themselves in a position of having to give instructions to their authorities, notably to the commanders of convoys as previously explained.

Article 67. (See p. 272)

This provision, of a purely formal character, needs no explanation. The wording adopted at The Hague by the second Peace Conference has been borrowed.

*Article 68. No comment**Article 69. (See p. 273)*

It follows implicitly from Article 69 that the Declaration is of indefinite duration. The periods after which denunciation is allowed have been fixed on the analogy of the convention for the establishment of an International Prize Court.

Article 70. (See p. 273)

The Declaration of Paris also contained an invitation to the Powers which were not represented to accede to the Declaration. The official invitation in this case, instead of being made individually by each of the Powers represented at the Conference, may more conveniently be made by Great Britain acting in the name of all the Powers.

The procedure for accession is very simple. The fact that the acceding Powers are placed on the same footing in every respect as the signatory Powers of course involves compliance by the former with Article 65. A Power can accede only to the whole, but not merely to a part, of the Declaration.

Article 71. (See p. 274)

As at The Hague, account has been taken of the situation of certain Powers the Representatives of which may not be in a position to sign the Declaration at once, but which desire nevertheless to be considered as signatory, and not as acceding, Powers.

It is scarcely necessary to say that the *Plenipotentiaries of the Powers* referred to in Article 71 are not necessarily those who were, as such, delegates at the Naval Conference.

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